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1 THE LIN LAW FIRM  
2 A PROFESSIONAL LAW CORPORATION  
ELIZABETH P. LIN (SBN 174663)  
2705 S. Diamond Bar Blvd.  
3 Suite 398  
Diamond Bar, CA 91765  
4 Telephone: (909) 595-5522  
Facsimile: (909) 595-5519  
5 Elizabethl@thelinlawfirm.com

6 Counsel for the Plaintiffs

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CLERK OF THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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VIA FAX

7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA

12CV1668 BEN BGS

10 Case No. \_\_\_\_\_  
RONALD D. ALLEN JR., RAYMOND )  
BOZIGIAN, ALEXANDRA M. CASTOR, )  
KEITH DENVER, MILTON DENVER, )  
JESSICA FLOREZ, ANTHONY FREEMAN, )  
MIKKI A. GRABER, MICHAEL )  
HACKMAN, JOSEPH HARRIS, NIKKI D. )  
HARRIS, GINA HOWARD, BEN JOHNSON, )  
PAUL JOHNSON, BONNIE J. KING, )  
BRITTNEY LUTTERS, CHERYL MAJEL, )  
JULIEANNE MENDOZA, LUANNE MORO, )  
KALCIE ONTIVEROS, KIRSTEN )  
ONTIVEROS, VIKKI L. OXLEY, JOEY )  
PINK, MATTHEW PINK, JOHN )  
RANDOLPH, LILLIAN VANCE, and MARIA )  
J. VIVANCO )  
18 Plaintiffs, )  
19 vs. )  
20 ROBERT H. SMITH, LEROY H. MIRANDA )  
JR., KILMA S. LATTIN, THERESA J. )  
NIETO, and DION PEREZ )  
22 Defendants. )  
23 )  
24 )  
25 )

JURY TRIAL DEMANDED  
COMPLAINT FOR CONSPIRACY TO  
INTERFERE WITH CIVIL RIGHTS,  
VIOLATIONS OF EQUAL PROTECTION,  
CONVERSION, TORTIOUS  
INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE, GROUP  
DEFAMATION, AND CIVIL CONSPIRACY

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## INTRODUCTION AND OVERVIEW

1. This case involves a scheme and conspiracy by which Defendants – members of the Executive Committee of the Pala Mission Band of Indians (“Pala” or the “Tribe”) – sought to enrich and entrench themselves in positions of power by stripping Plaintiffs of their Tribal citizenship. In the course of “disenrolling” Plaintiffs, or removing them from the Tribal membership roll, Defendants deprived Plaintiffs of due process and actively took steps to ensure that Plaintiffs would be foreclosed from access to courts and appeals. These egregious acts by Defendants were unauthorized and illegitimate. Defendants’ wrongful actions have caused extreme hardship on Plaintiffs and other disenrollees who have ceased receiving their per capita distributions of approximately \$150,000 annually from the Tribe, have lost or are at risk of losing their homes, have lost their health insurance and medical care, and are no longer eligible for scholarships and tuition assistance programs. Trust accounts for Plaintiffs’ minor children, many of which contain over half a million dollars per account, are believed to be extinguished. Plaintiffs will also suffer the intangible but significant loss of cultural identity, heritage, and Tribal citizenship. The profound and devastating impact of the disenrollments on the disenrollees financially, psychologically, and socially cannot be underemphasized. Indeed, one former Pala member’s grief over her loss of tribal membership contributed to her death after she was disenrolled.

19       2.     In 1903, U.S. officials forcibly removed the Cupeño Indians from their ancestral  
20 homeland in Kupa onto the Pala Indian Reservation, and insisted that the Cupeño tribe and the  
21 Luiseño tribe combine into one. They became the Pala Band of Mission Indians. Margarita  
22 Britten ("Britten")<sup>1</sup>, born in 1856, was one of the original members of the Cupeño tribe who  
23 moved to Pala. Margarita Britten became a revered elder at Pala, had seven children, and  
24 participated in the Tribe until her death in 1925.

<sup>1</sup> Margarita's last name has also been spelled "Brittain".

1       3. In 1960, Pala formally organized by adopting its Articles of Association. The  
 2 Articles of Association provided that Pala would be governed by its General Council consisting of  
 3 all adult members, who shall elect an Executive Committee consisting of a Chairman, a Vice-  
 4 Chairman, a Secretary, and two adult members of the Band. The Articles of Association also  
 5 defined Pala's membership requirement. Pala's membership requirement, like that of many  
 6 American Indian tribes, is based on "blood quantum," or degree of Indian blood. Pala's Articles  
 7 of Association defined members as consisting of those persons whose names appear on the Pala  
 8 Allotment Rolls on November 3, 1913, and all living descendants of those persons on the  
 9 Allotment Rolls, provided that they have at least one-sixteenth (1/16) or more degree of Indian  
 10 Blood of the Band.<sup>2</sup> Margarita Britten's name appears on the Pala Allotment Rolls on November  
 11 3, 1913, as Allottee no. 25, and the Allotment Rolls identify her as having "4/4" degree Pala blood.

12      4. Beginning in 2001, as Pala built a casino and became involved in other business  
 13 ventures, the Tribe became very profitable. However, the wealth of the Tribe began to breed greed  
 14 and corruption, prompting Pala members – including the descendants of Margarita Britten  
 15 ("Britten Descendants") who constituted a large voting block within the General Council – to  
 16 begin questioning the conduct of members of the Executive Committee, headed by  
 17 Chairman/Defendant Robert Smith ("Smith"). Among other things, questions were raised  
 18 concerning the Executive Committee's entry into questionable transactions on behalf of the Tribe,  
 19 the Executive Committee's use of Tribal assets for personal use, and the propriety of Tribal  
 20 elections, including whether Smith had allowed non-members to vote in Tribal elections, paid for  
 21 votes, and changed or destroyed absentee ballots. In 2003, some of the Britten Descendants  
 22 petitioned to request a Special Meeting to discuss inappropriate personal conduct of  
 23 Chairman/Defendant Smith at the Pala Casino; however, Smith cancelled the meeting, declaring  
 24 the petition signed by more than 90 Tribal members to be illegal.

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 26 \_\_\_\_\_  
 27 <sup>2</sup> "Indian Blood of the Band" refers to the blood of the Cupeños, Luseños, and others who had  
 28 formed the Tribe.

1       5. In early 2011, Reyes “King” Freeman (“Freeman”) – a descendant of Margarita  
2 Britten who had formerly served as Chairman and Vice-Chairman of the Tribe – began an effort to  
3 recall Defendant Leroy Miranda (“Miranda”) as Vice Chairman, after he learned that Miranda had  
4 been arrested for allegedly soliciting a male prostitute and did not complete his parole. Although  
5 Freeman’s petition garnered enough support to have a special meeting regarding the gross  
6 misconduct of Miranda, Pala’s Executive Committee, made up of the Defendants, claimed that  
7 many of the Pala members who had initially signed the petition subsequently requested to have  
8 their names taken off the petition and that, therefore, the petition lacked sufficient votes and was  
9 denied. Freeman’s attempt to remove Miranda from office, however, infuriated the Defendants,  
10 particularly Chairman/Defendant Smith, who had already had a personal grudge against Freeman.  
11 During a heated General Council meeting, Smith said to Freeman, “your kids are off the rolls.” On  
12 June 1, 2011, Defendants disenrolled eight Britten Descendants from the Tribe – including three of  
13 King Freeman’s children and other relatives – purportedly on the grounds that they did not have  
14 the 1/16 blood quantum necessary to be Pala members because their ancestor, Margarita Britten,  
15 was not a 4/4 degree Pala Indian.

16       6. After these eight Britten Descendants were disenrolled, a flyer condemning  
17 Defendants’ wrongful disenrollments was distributed. Among other things, the flyer stated:  
18 “People want to know how can the Executive/Enrollment Committee disenroll only eight family  
19 members and not the rest of family who are 1/16th descendants? This is how: Robert Smith has  
20 turned this ‘General Council’ tribe into a dictatorship.” In response to the flyer, which  
21 Chairman/Defendant Smith believed was written by King Freeman, Smith issued a letter to Tribal  
22 members attacking Freeman and threatening, among other things, that: “King Freeman has lived  
23 on his own lies for over 20 years as a member in our Band and in our community. The Pala Band  
24 of Mission Indians voting membership needs to take a firm stand and stay strong as an entity and

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1 not allow this to continue. *He wants the rest of his family who are 1/16 descendants,*  
 2 *disenrolled!!! Don't take my word for it, see his flyer!!!*<sup>3</sup>

3       7. Soon after issuing this letter, on February 1, 2012, Chairman/Defendant Smith  
 4 carried out his threat of disenrolling other relatives of King Freeman by expelling from the Tribe  
 5 154 other Britten Descendants. In doing so, Defendants eliminated approximately 15 percent of  
 6 the Tribe's members. By disenrolling Freeman's relatives, who not only lost money and benefits  
 7 but also their rights to vote and to petition, Defendants secured their power and control over the  
 8 Tribe and stood to benefit financially, as the per capita payments that would have otherwise gone  
 9 to the disenrolled Britten Descendants would now be distributed to Defendants and other members  
 10 of the Tribe. Plaintiffs are some of the Britten Descendants who were disenrolled from the Tribe  
 11 by Defendants on June 1, 2011, and February 1, 2012.

12       8. In disenrolling Plaintiffs and other Britten Descendants, Defendants acted palpably  
 13 and manifestly beyond their authority. As the events leading up to the disenrollments demonstrate,  
 14 these disenrollments were not about Defendants' acting within their official capacity to ensure that  
 15 rightful members belong in the Tribe, but were instead about Defendants' abuse of power by using  
 16 the disenrollments to retaliate against political enemies, keep themselves in their positions of  
 17 power, and eliminate and punish members of a particular familial and racial lineage who had dared  
 18 to challenge their authority.

19       9. Although Defendants purported to derive their power to disenroll the Britten  
 20 Descendants from Pala's Constitution and the Revised Enrollment Ordinances that they had  
 21 enacted, Defendants in fact lacked such power. Among other things, Pala's Constitution was not  
 22 validly adopted because it was not approved by a majority of the voters in a duly called election, as  
 23 required pursuant to Section 476(a) of the Indian Reorganization Act (25 U.S.C. § 476(a)) and  
 24 Pala's Articles of Associations, which had preceded the Constitution. Instead, the Constitution  
 25 was adopted through a Resolution that was passed by only 27 votes. As Pala had approximately

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26  
 27 <sup>3</sup> Unless otherwise indicated, bold and italicized text indicates that emphasis has been added.  
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1 900 members, over 300 votes would have been required to approve the Constitution in order for  
2 this important governing document to be validly adopted. Because the required election to ratify  
3 the Constitution did not occur, Pala continues to be governed by its original Articles of Association  
4 and the Original Enrollment Ordinance enacted thereunder, which provide that membership  
5 decisions could not be made unilaterally by the Executive Committee. Notably, as recently as  
6 February 2012, Pala's website stated that the Tribe was governed by its Articles of Association,  
7 rather than its Constitution.

8 10. Even assuming the validity of Pala's Constitution and the Revised Enrollment  
9 Ordinances enacted thereunder by Defendants, Defendants exceeded their authority in disenrolling  
10 the Britten Descendants. Among other things, Pala's Constitution empowered members of the  
11 Executive Committee to add or delete names from the Tribal rolls only for reasons of death, birth,  
12 or voluntary relinquishment of membership by a Pala member. The disenrollments of the Britten  
13 Descendants did not fall under any of these criteria. Moreover, Pala's Revised Enrollment  
14 Ordinances specifically state that "the Executive Committee of the Pala Band, by adoption of this  
15 revised ordinance, does not intend to alter or change the membership status of individuals whose  
16 membership has already been approved and who are currently listed on the membership roll of the  
17 Pala Band of Mission Indians ...." Because the membership of Plaintiffs and other Britten  
18 Descendants had already been approved, and they were listed on Pala's membership roll,  
19 Defendants had no power to remove Plaintiffs and other Britten Descendants from Pala's Tribal  
20 rolls.

21 11. Additionally, Defendants had no power to disenroll Plaintiffs and the other Britten  
22 Descendants on the basis of Margarita Britten's blood degree. The 1913 Pala Allotment Rolls,  
23 which serve as the original "base roll" for the Tribe, list Margarita Britten as having "4/4" degree  
24 Pala Indian blood. Although unauthorized alterations were later made to Margarita Britten's blood  
25 degree, in the 1980s, after a thorough and extensive investigation – including a review of sworn  
26 statements, government records, family history cards, and other evidence – the Bureau of Indian  
27 Affairs ("BIA"), the division of the Department of Interior in charge of overseeing American  
28

1 Indian issues, ruled that Margarita Britten was a full-blooded Pala Indian. The BIA has repeatedly  
2 reiterated its conclusion that this ruling *was final*. In addition, in 1984, Pala's General Council –  
3 comprised of all Pala members 18 years and older – voted on and approved a resolution to correct  
4 Margarita Britten's blood degree to reflect that she was a full-blooded Pala Indian. Because  
5 Defendants, as members of Pala's Executive Committee, were required to carry out the resolutions  
6 of the General Council, they *had to* accept that Margarita Britten was a full-blooded Pala Indian,  
7 and could not arbitrarily reach a different conclusion on their own to suit their personal agenda.

8       12. Further, Defendants lacked power to decide on the disenrollment of the Britten  
9 Descendants because at least two of the Defendants were charged and pled guilty to crimes while  
10 in office. Under Pala's Constitution, their positions should have been automatically vacated and  
11 they should not have been serving on Pala's Executive Committee. As such, Defendants' decision  
12 to disenroll the Britten Descendants was invalid.

13       13. In addition, Defendants did not have authority to disenroll Plaintiffs because at a  
14 General Council meeting on January 9, 2002, the Tribe approved a moratorium on membership  
15 requirements for ten (10) years. As such, Defendants were restricted from taking any action with  
16 respect to any tribal member's status or implementing enrollment ordinances that gave themselves  
17 power over the Tribal membership. Further, since the BIA had final approval over membership  
18 applications as of 2002, the BIA had the final say on enrollments, not Defendants.

19       14. Moreover, Defendants exceeded the power granted them by the Tribe because, in  
20 extinguishing Plaintiffs' citizenship from the Tribe, Defendants violated the rights afforded to  
21 Plaintiffs under Pala's governing laws. Even assuming the validity of Pala's Constitution, the  
22 Constitution mandates that "[t]he Pala Band shall provide all persons with due process and equal  
23 protection of the law required by the Indian Civil Rights Act." Although the Constitution provides  
24 that "[t]he Executive Committee may from time to time amend and/or replace its existing  
25 Enrollment Ordinance with an Ordinance governing adoption, loss of membership, disenrollment  
26 and future membership," it requires that the Executive Committee can only do so "provided that  
27 such ordinance are in compliance with this Constitution." Indeed, the Constitution specifically  
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1 provides that “[p]rocedures for disenrollment ... shall provide that the member receives due  
2 process and equal protection as required by the Indian Civil Rights Act.” The Indian Civil Rights  
3 Act, enacted by Congress in 1968, made many of the guarantees of the Bill of Rights applicable to  
4 Indian tribes in order to prevent abuses that many tribal members had endured from the  
5 “sometimes corrupt, incompetent, or tyrannical tribal officials.” However, in violation of Pala’s  
6 Constitution and the Indian Civil Rights Act, Plaintiffs were not provided with any due process or  
7 equal protection when they were disenrolled from the Tribe. Plaintiffs were not given notice that  
8 they were being considered for disenrollment, did not have an opportunity to present evidence, and  
9 did not have a hearing. Instead, they were simply notified that they had been disenrolled from the  
10 Tribe.

11       15. In fact, Defendants conspired to ensure that Plaintiffs and other disenrolled Britten  
12 Descendants would have no recourse in any court or on appeal in connection with the wrongful  
13 and illegitimate disenrollments that violated due process and civil rights. Just months before  
14 beginning their wave of disenrollments – and concurrent with King Freeman’s attempt to remove  
15 Vice Chairman/Defendant Miranda – Defendants caused Pala to withdraw its membership from  
16 the Intertribal Court of Southern California (“Intertribal Court”). The Intertribal Court provides  
17 hearings to member tribes to resolve tribal disputes, and it operates under a transparent process  
18 including access to court records, information about cases, and appeals. By withdrawing from the  
19 Intertribal Court, Defendants, who controlled and dominated Pala, could then deprive Plaintiffs of  
20 their rights without any interference or scrutiny. This is particularly so because Defendants had  
21 already taken away any meaningful appellate review of their enrollment decisions when they  
22 enacted Pala’s Revised Enrollment Ordinances to provide that while individuals challenging  
23 enrollment decisions by the Executive Committee could technically appeal their decision to the  
24 BIA, the BIA *could not compel* the Executive Committee to change or reverse its decision but  
25 *could only make a recommendation* to the Executive Committee as to whether it should uphold or  
26 change its decision. In contrast, prior to Defendants’ adoption of the Revised Enrollment  
27  
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1 Ordinances, Pala's Original Enrollment Ordinance provided that the U.S. Secretary of the Interior  
 2 was the final arbiter on Pala membership issues.

3       16. Defendants' scheme and conspiracy to disenroll Plaintiffs and other Britten  
 4 Descendants from the Tribe was willful and malicious. Defendants' disenrollment of Plaintiffs  
 5 was not about defining Pala's membership, as Pala's membership requirements had not changed  
 6 since the Tribe formally organized. Instead, Defendants' actions arose from their desire to  
 7 eliminate political and personal enemies and for personal gain. By purging Plaintiffs and other  
 8 Britten Descendants from the Tribe under the guise of conducting their official duty, Defendants  
 9 effectively took away these individuals' rights to petition, to vote, and to otherwise challenge  
 10 Defendants' conduct so that Defendants could continue their reign of control and dominance over  
 11 the Tribe. In addition, by eliminating these members from Tribe, Defendants stood to receive  
 12 additional monetary distributions from the Tribe and would continue to stay in power to engage in  
 13 questionable financial transactions without scrutiny. Plaintiffs were deprived of due process and  
 14 equal protection in connection with their disenrollments, and Defendants additionally took steps to  
 15 ensure that they would have no recourse in the Intertribal Courts. There are no tribal remedies to  
 16 exhaust, and there is no process for review of Defendants' conduct. Plaintiffs, therefore, seek  
 17 remedy from this Court.<sup>4</sup>

18       17. As noted by Professor Wilkins, a Lumbee Indian and professor of American Indian  
 19 studies at the University of Minnesota, "some tribal officials are, without any concern for human  
 20 rights, tribal traditions or due process, arbitrarily and capriciously disenrolling tribal members as a  
 21 means to solidify their own economic and political bases and to winnow out opposition families  
 22 who disapprove of the direction the tribal leadership is headed. What was historically a rare event  
 23 . . . has tragically become almost commonplace in Indian country, leaving thousands of bona fide  
 24 Native individuals without the benefits and protections of the nations they are biologically,  
 25 culturally, and spiritually related to."

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 27       <sup>4</sup> Pala's tribal court only hears vehicle citation cases.  
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18. Plaintiffs' monetary distributions and other benefits were cut off effective the date of their disenrollments. Although the BIA, upon the appeals of certain of the Plaintiffs and other Britten Descendants, has recommended that the Executive Committee re-enroll them, Pala's Executive Committee – which is still currently controlled by Chairman Smith and Vice Chairman Miranda – has yet to act on the BIA's recommendation regarding the first eight disenrollees, despite the requirement in Pala's Revised Enrollment Ordinances requiring that they act within 30 days. Moreover, the Executive Committee declared its decision to disenroll the other 154 Britten Descendants "final," even before it received the BIA's recommendation to re-enroll them. This further demonstrates Defendants' flagrant disregard of the law and any due process.

19. In addition to the money and other property that have been wrongfully taken from them by Defendants, Plaintiffs have suffered, and continue to suffer, the loss of their Pala citizenship, culture, heritage and ancestry. The U.S. Supreme Court has previously noted that deprivation of citizenship is “an extraordinarily severe penalty” with consequences that “may be more grave than consequences that flow from conviction for crimes.” Indeed, Native American Indians are referring to disenrollments as “genocide” on the Internet, as entire families are effectively being killed off from their tribes. As a recent March 2012 article in the Los Angeles Times aptly summed up in its heading regarding the disenrollment of Plaintiffs and other Britten Descendants, these disenrollments are a continuation of “The Cupeños’ own Trail of Tears - Today’s Pala Band of Mission Indians was born of a traumatic event in 1903. ***For some Cupeño descendants, the pain continues.***”

## **JURISDICTION AND VENUE**

20. This Court has jurisdiction over the civil rights claims pursuant to 42 U.S.C. §1985(3) and 42 U.S.C. §1981. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 (Federal Question) and 28 U.S.C. §1343(a)(1)-(a)(2) (Civil Rights).

21. This Court has supplemental jurisdiction over the claims arising under common law, pursuant to 28 U.S.C. §1337, because these claims arise from the same nucleus of operative

facts alleged in this Complaint and are so related to the federal claims over which this Court has original jurisdiction that they form part of the same case or controversy.

22. Venue is proper in this Court because the Defendants reside in this County and engaged in acts of wrongdoing therein.

## THE PARTIES

#### **A. Plaintiffs**

23. Plaintiff Ronald D. Allen, Jr. was, at all relevant times hereto, a Pala member until he was disenrolled and disenfranchise from the Tribe on February 1, 2012.

24. Plaintiff Raymond Bozigian was, at all relevant times hereto, a Pala member until he was disenrolled and disenfranchise from the Tribe on February 1, 2012.

25. Plaintiff Alexandra M. Castor was, at all relevant times hereto, a Pala member until she was disenrolled and disenfranchised from the Tribe on February 1, 2012.

26. Plaintiff Keith Denver was, at all relevant times hereto, a Pala member until he was disenrolled and disenfranchised from the Tribe on June 1, 2011.

27. Plaintiff Milton Denver was, at all relevant times hereto, a Pala member until he was disenrolled and disenfranchised from the Tribe on June 1, 2011.

28. Plaintiffs Jessica Florez was, at all relevant times hereto, a Pala member until she was disenrolled and disenfranchised from the Tribe on February 1, 2012.

29. Plaintiff Anthony Freeman was, at all relevant times hereto, a Pala member until he was disenrolled and disenfranchised from the Tribe on June 1, 2011.

30. Plaintiff Mikki A. Graber was, at all relevant times hereto, a Pala member until she was disenrolled and disenfranchised from the Tribe on February 1, 2012.

31. Plaintiff Joseph Harris was, at all relevant times hereto, a Pala member until he was disenrolled and disenfranchised from the Tribe on February 1, 2012.

32. Plaintiff Nikki D. Harris was, at all relevant times hereto, a Pala member until she was disenrolled and disenfranchised from the Tribe on February 1, 2012.

1       33. Plaintiff Michael Hackman was, at all relevant times hereto, a Pala member until he  
2 was disenrolled and disenfranchised from the Tribe on February 1, 2012.

3       34. Plaintiff Gina Howard was, at all relevant times hereto, a Pala member until she  
4 was disenrolled and disenfranchised on June 1, 2011.

5       35. Plaintiff Ben Johnson was, at all relevant times hereto, a Pala member until he was  
6 disenrolled and disenfranchised from the Tribe on February 1, 2012.

7       36. Plaintiff Paul Johnson was, at all relevant times hereto, a Pala member until he was  
8 disenrolled and disenfranchised from the Tribe on February 1, 2012.

9       37. Plaintiff Bonnie L. King was, at all relevant times hereto, a Pala member until she  
10 was disenrolled and disenfranchised from the Tribe on February 1, 2012.

11       38. Plaintiff Brittney Lutters was, at all relevant times hereto, a Pala member until she  
12 was disenrolled and disenfranchised from the Tribe on February 1, 2012.

13       39. Plaintiff Cheryl Majel was, at all relevant times hereto, a Pala member until she was  
14 disenrolled and disenfranchised from the Tribe on June 1, 2012.

15       40. Plaintiff Julieanne Mendoza (a/k/a Julieanne Pink) was, at all relevant times hereto,  
16 a Pala member until she was disenrolled and disenfranchised from the Tribe on February 1, 2012.

17       41. Plaintiff Luanne Moro was, at all relevant times hereto, a Pala member until she  
18 was disenrolled and disenfranchised from the Tribe on June 1, 2011.

19       42. Plaintiff Kalcie Ontiveros was, at all relevant times hereto, a Pala member until she  
20 was disenrolled and disenfranchised from the Tribe on February 1, 2012.

21       43. Plaintiff Kirsten Ontiveros was, at all relevant times hereto, a Pala member until she  
22 was disenrolled and disenfranchised from the Tribe on February 1, 2012.

23       44. Plaintiff Vikki L. Oxley was, at all relevant times hereto, a Pala member until she  
24 was disenrolled and disenfranchised from the Tribe on February 1, 2012.

25       45. Plaintiff Joey Pink was, at all relevant times hereto, a Pala member until he was  
26 disenrolled and disenfranchised from the Tribe on February 1, 2012.

1       46. Plaintiff Matthew Pink was, at all relevant times hereto, a Pala member until he was  
2 disenrolled and disenfranchised from the Tribe on February 1, 2012.

3       47. Plaintiff John Randolph was, at all relevant times hereto, a Pala member until he  
4 was disenrolled and disenfranchised from the Tribe on February 1, 2012.

5       48. Plaintiff Lillian Vance was, at all relevant times hereto, a Pala member until she  
6 was disenrolled and disenfranchised from the Tribe on February 1, 2012.

7       49. Plaintiff Maria J. Vivanco was, at all relevant times hereto, a Pala member until she  
8 was disenrolled and disenfranchised from the Tribe on February 1, 2012.

9  
10      **B. Defendants**

11       50. Defendant Robert H. Smith (“Smith”) has been Chairman and a member of Pala’s  
12 Executive Committee since 1987. As Pala’s Chairman, Smith was also the head of Pala’s casino  
13 operations and the Tribe’s other business activities. Smith participated in the scheme and  
14 conspiracy to disenfranchise and disenroll Plaintiffs from the Pala tribe. Smith resides within this  
15 District.

16       51. Defendant Leroy H. Miranda Jr. (“Miranda”) has been Vice-Chairman and a  
17 member of Pala’s Executive Committee since 2001. Miranda participated in the scheme and  
18 conspiracy to disenfranchise and disenroll Plaintiffs from the Pala tribe. Miranda resides within  
19 this District.

20       52. Defendant Kilma S. Lattin (“Lattin”) was Secretary and a member of Pala’s  
21 Executive Committee from 2005 to 2011. He assisted in drafting and ratifying tribal ordinances,  
22 policies and resolutions, as well as Constitutional amendments. Lattin participated in the scheme  
23 and conspiracy to disenfranchise and disenroll Plaintiffs from the Pala tribe. Lattin resides within  
24 this District.

25       53. Defendant Theresa J. Nieto (“Nieto”) has been Treasurer and a member of Pala’s  
26 Executive Committee since 2001. Nieto participated in the scheme and conspiracy to  
27 disenfranchise and disenroll Plaintiffs from the Tribe. Nieto resides within this District.

1       54. Dion Perez (“Perez”) has been a Council Member on Pala’s Executive Committee  
2 since 2001. Perez participated in the scheme and conspiracy to disenfranchise and disenroll  
3 Plaintiffs from the Pala tribe. Perez resides within this District.

4       55. Smith, Miranda, Lattin, Nieto and Perez (“Defendants”), as members of Pala’s  
5 Executive Committee, participated in the scheme and conspiracy to disenroll Plaintiffs and other  
6 Britten Descendants. One of the members of the Executive Committee, Annalee Trujillo  
7 (“Trujillo”), is not a named defendant herein because, as a Britten Descendant, she did not  
8 participate in the Executive Committee meetings regarding the disenrollments of Plaintiffs and the  
9 other Britten Descendants. Trujillo was also disenrolled by Defendants from the Tribe on  
10 February 1, 2012, and she lost her Executive Committee position thereby.

11       56. Defendants, as members of Pala’s Executive Committee, were in positions of power  
12 and control over members of the Tribe. Because Pala did not have a separate Enrollment  
13 Committee, Defendants were also the members of Pala’s Enrollment Committee. Defendants  
14 exceeded their authority by disenfranchising and disenrolling the descendants of Margarita Britten  
15 arbitrarily, capriciously, and unlawfully. Moreover, they took steps to ensure that Plaintiffs would  
16 have no recourse to challenge their gross misconduct by stripping the BIA of its authority over  
17 membership issues and by withdrawing Pala from the Intertribal Courts. Defendants’  
18 disenrollment of the Britten Descendants arose from greed, discrimination against a particular  
19 family and race, personal animus, and their desire to punish those who had asserted their rights and  
20 dared to challenge them. Plaintiffs and other Britten Descendants who were disenrolled  
21 immediately lost their right to vote in Tribal elections and to petition for the removal of officers  
22 from the Executive Committee, thus ensuring that the Defendants, as members of the Executive  
23 Committee, would remain in positions of power and control over the Tribe. The disenrollment  
24 also served to silence any other Pala members who might speak up against Defendants. By  
25 disenfranchising and disenrolling the Britten Descendants, Defendants removed political enemies  
26 and got rid of individuals with whom they had personal animus and vendettas. By purging the  
27  
28

1 Tribe of the Britten Descendants, Defendants would be free to continue their reign of domination  
2 under the cloak of secrecy with no dissension.

3 57. In eliminating the Britten Descendants from the Tribe, Defendants stood to gain  
4 financially since a reduction in Pala's membership meant that the per capita payments and other  
5 money that would have gone to those Britten Descendants would instead be distributed to  
6 themselves and the remaining Pala members. Moreover, Defendants could continue to operate the  
7 Tribe and continue to enter into questionable transactions on behalf of the Tribe without challenge  
8 to their authority or scrutiny. Upon information and belief, in or around 1995, the accounting firm  
9 of Hosaka & Nagel, which had been hired by the Tribe to conduct an annual audit, was terminated  
10 after they reported discrepancies to Chairman/Defendant Smith.

11 58. Additionally, by ridding the Tribe of the Britten Descendants – who constitute the  
12 majority of the Cupeños in the Tribe – Defendants would eliminate most of the Cupeños from  
13 Pala, thus settling century old scores between the Cupeños and the Luseños. Chairman/Defendant  
14 Smith and some elder Luseños believe that the Luseños should have complete control over the  
15 tribal lands because they were there first. As such, the disenrollment of the Britten Descendants  
16 was also racially motivated.

17 59. Defendants Smith, as Chairman of Pala, dominated the Tribe's Executive  
18 Committee. The other Executive Committee members are beholden to and are controlled by  
19 Smith. For example, in the Tribal election in 2001, even though King Freeman was elected Vice  
20 Chairman, Chairman/Defendant Smith, who had a long standing personal grudge against Freeman,  
21 disallowed a handful of votes and announced Miranda the Vice Chairman. In addition, in June  
22 2010, several Tribal members had raised the fact that Lattin should not have been allowed to run  
23 for Secretary because of his criminal record; however, Smith ignored these arguments and, instead,  
24 banished the Tribal members from meetings and withheld their per capita distributions for a year.  
25 Further, public records indicate that Pala Chairman/Defendant Smith is either related to Pala  
26 Treasurer/Defendant Nieto or is using her last name for other purposes, as the records indicate that  
27 Defendant Smith might have used the aliases "Robert Nieto, Bob Nieto, and Rob Nieto." Smith  
28

1 used his influence to encourage and cause the other Defendants to agree to participate in a  
2 conspiracy to deprive Plaintiffs and other Britten Descendants of their civil rights and property.

3       60. Each of the Defendants had knowledge of and actively participated in, agreed,  
4 acquiesced in and/or approved of the wrongdoings alleged herein. Each Defendant in this action,  
5 individually or jointly, as alleged herein, participated in a scheme and conspiracy to deprive  
6 Plaintiffs of their property and rights without due process or equal protection.

## BACKGROUND

8        61. In 1880, former California Governor John Downey purchased the ancestral land of  
9 the Cupeño Indian tribe, called Kupa, now Warner's Springs, in order to develop the land as a  
10 resort. Following legal challenges, the U.S. government ordered the Cupeños removed from Kupa.  
11 On May 12, 1903, armed federal agents forcibly evicted hundreds of Cupeños from Kupa. Each  
12 family was allowed one wagon to carry all of their possessions. After a 40-mile forced march that  
13 took three days, the Cupeños were herded around Mt. Palomar to a spot beside a Catholic mission  
14 in the San Luis Rey River Valley. There, they found a wasteland. This event is known as the  
15 "Cupeño Trail of Tears." At the insistence of U.S. officials, the Cupeño Indians moved onto the  
16 Pala Indian reservation and melded with the Luseño tribe that lived nearby. The modern day Pala  
17 Band of Mission Indians are descendants of the original Luseños and Cupeños who constitute the  
18 Tribe. However, to this day, tensions exist between descendants of the two tribes. Descendants of  
19 the Luseños prefer one cemetery, while the descendants of the Cupeños largely prefer another.

20        62. One of the survivors of the 1903 forced march was Margarita Britten, Pala Allottee  
21 no. 25. Britten became a revered tribal elder at Pala and had seven children. Margarita Britten  
22 died in 1925.

23        63. Many American Indian tribes have blood quantum laws to determine their  
24 membership. Tribes often use U.S. census and other documents from the late 1800 and 1900s to  
25 establish membership rolls. Only direct descendants of those original members are eligible to be  
26 enrolled as members of Indian tribes. Disenrollment is when someone is stripped of citizenship in  
27 his or her tribe. When members are disenrolled, they are no longer able to participate in tribal

1 elections or other political affairs. They are denied the rights and services afforded members of the  
 2 federally recognized tribe from which they have been removed. They are no longer eligible for  
 3 services and programs offered by the State to members of federally recognized tribes. And  
 4 disenrolled members may be forced off Indian land. They, in essence, will have lost all of the  
 5 benefits and identity derived from being a member of their tribe.

6 64. In 2001, Pala opened a casino on its reservation. The casino has over 2,000 slot  
 7 machines, 15 poker tables, and 87 table games. The casino also has a 508-room, 10-story hotel, a  
 8 10,000-square foot spa and salon with 14 treatment rooms, a fitness center, a swimming pool with  
 9 poolside cabanas, and 10 restaurants. In addition to the casino and hotel, Pala is involved in other  
 10 business, such as a motocross raceway.

11 65. Pala prospered from the casino and its other business investments. According to a  
 12 report, the Tribe had an income surplus of over \$140 million in 2008. A July 1, 2011 article  
 13 entitled "Top of Their Game," published in the American Executive, also reported that defendant  
 14 Smith, Chairman of the Pala tribe, had stated that business was strong and that the hotel was sold  
 15 out every weekend.

16 66. In allowing American Indians to have gaming operations on their reservation, and  
 17 in enacting the Indian Gaming Regulatory Act to govern Indian gaming in the United States,  
 18 Congress expressly wanted "to ensure that the Indian tribe is the primary beneficiary of the gaming  
 19 operation." To that end, Pala had to meet certain requirements, including submitting a plan for  
 20 allocating its gaming revenue to the BIA. Pursuant to Pala's Amended Plan for the Allocation of  
 21 Gaming Revenues (PAGR), 60% of the Tribe's gaming revenue is supposed to go to per capita  
 22 payments made to individual members of the Tribe, and 15% of the gaming revenue is supposed to  
 23 provide for the general welfare of Tribal members, including medical, dental, unemployment,  
 24 welfare and retirement benefits, scholarships, tuition and tutoring, annuities and the establishment  
 25 of trust funds for minor members.

26 67. Because Pala, like many other American Indian tribes, requires that casino money  
 27 be distributed to members of the Tribe, the fewer the Tribal members the more money the  
 28

1 remaining members will receive. As such, there is a strong incentive for those in power and  
 2 control to disenroll tribal members. The American Indian Movement estimates that upward of  
 3 3,000 tribal members from two dozen tribes in California and other states have been "disenrolled"  
 4 in the last 15 years.

5       68. According to a November 29, 2006 USA Today article, as Native American tribes  
 6 purge members from their rolls and deny applications, thousands of Indians have lost their cultural  
 7 identities, share of casino profits, and access to tribal benefits, such as medical care, housing, and  
 8 education. The article quoted Kevin Gover, law professor at Arizona State University and former  
 9 Assistant Secretary of the Interior for Indian Affairs, as stating that he believes "expulsions are  
 10 related to feuding families that form political factions who wish to rid their enemies." The article  
 11 also reported that disenrollments are many times caused by tribal members questioning potentially  
 12 fraudulent transactions, quoting a disenrolled member from the Narragansett Indian tribe in Rhode  
 13 Island who said that she and dozens of relatives were kicked out because she questioned how the  
 14 tribe spent \$1 million it received from Harrah's Entertainment, which had been planning a casino  
 15 with the tribe. The article further reported that disenrollments are often without basis; for example,  
 16 the Pechanga tribe has disenrolled hundreds of members, despite findings by the *Tribe's own*  
 17 *expert*, John Johnson, a curator of anthropology at the Santa Barbara Museum of Natural History,  
 18 that disenrolled members in fact belong in the Tribe. The article described the effects of  
 19 disenrollments, including as follows:

20           Madariaga, 43, and his family lost access to tribal benefits, including the  
 21 monthly casino payout and meals for the elderly, he says. He lost his job at  
 22 the casino. The children had to leave the reservation school.

23           Madariaga's 89-year-old grandfather, Lawrence, has prostate cancer. After  
 24 his health insurance was cut off, he didn't take his medications for a few  
 25 months, Madariaga says. Now, he's dipping into his retirement to pay for  
 26 them.

27           Madariaga describes his grandfather as an integral member of the tribe  
 28 who helped upgrade the water system and bring electricity and phones to  
 tribe members. "He designed and helped build the health clinic," he says  
 of his grandfather.

1 Madariaga says disenrollment "took a lot out of" his grandfather and  
2 grandmother, Sophia, 86.

3 "The anger, the stress, that's not good at their age and for their health," he  
4 says. "When they were cut off from the health benefits, they were very  
5 stressed."

6 *But the hardest part hasn't been losing benefits and casino payouts,*  
7 *Madariaga says.*

8 *"What matters is taking away our heritage," he says.*

9 *"It's like taking your family and wiping them out of history."*

10 69. Similarly, an April 22, 2012 Las Vegas Review Journal article entitled "It Was  
11 Identity Theft," reported the effects that disenrollments have had on tribal members, including  
12 financial ruin, bankruptcy, and loss of their homes, not to mention their sense of identity. Often  
13 there is no recourse for disenrollees; even when disenrolled members win a reversal of the  
14 disenrollment decision in tribal courts, leaders of the tribe may ignore the tribal court decisions.  
15 The article quoted David Wilkins, a professor of American Indian studies at the University of  
16 Minnesota, as follows:

17 *Native American tribes have increasingly used the "mask" of blood  
18 quannts to oust members but there is "obviously something else at  
work," says David Wilkins, a Lumbee Indian and professor of American  
19 Indian studies at the University of Minnesota.*

20 \* \* \*

21 The practice is especially prevalent in California, where gambling at  
22 dozens of casinos owned by tribes takes in billions of dollars a year.  
23 Thousands of Native Americans there have been kicked out of their tribes  
24 in recent years.

25 *The outings can be spurred by family feuds or "alleged" racial criteria,  
26 which Wilkins says are questionable.*

27 "How does one accurately gauge blood quantum? Frequently the  
28 (membership) rolls were corrupt or flawed. *It's a ruse used by tribes to  
justify their actions.*"

*The main reason is financial, he says, and involves "problems related  
to the distribution of assets."*

*Some of the disenrolled in California say they were targeted after “raising questions about the tribal government’s political or economic activities,” Wilkins says. The tribes “are feeling emboldened, doing whatever they want to winnow out those who don’t toe the tribal line.”*

Wilkins is especially troubled by the practice as a Native American. It goes against the whole notion of the tribe as an extended family, he says.

*"It's really a dirty scene. You have tribes violating their own historical traditions and values. Historically, you found a way to restore harmony and balance. Historically, we don't do this to ourselves."*

## SUBSTANTIVE ALLEGATIONS

70. Pala is located on a 12,000-acre reservation east of Interstate 15 and south of Temecula. Many of the Tribe's members live on the reservation. Prior to the disenrollment of the Britten Descendants, the Tribe had approximately 900 enrolled members.

71. Pala is supposed to be governed by its General Council, consisting of all adult members eighteen years and older. The General Council elects an Executive Committee comprised of six elected officials with two-year terms that includes the chairman, vice chairman, treasurer, secretary, and two council persons.

72. On November 6, 1960, the Tribe formally organized by adopting the Pala Articles of Association, which were approved by the Commission of Indian Affairs on March 7, 1960. Section 2(A) of the Articles of Association defined membership in the Tribe, stating that it shall consist of:

(1) Those persons whose names appear on the Pala Allotment Rolls as approved by the Secretary of the Interior on April 12, 1895, and November 3, 1913, who are living on the date of approval by the Commissioner of Indian Affairs;

(2) All living descendants of persons on the Allotment Rolls covered in Section 2.A(1) regardless of whether the original allottees are living or deceased, provided that such descendants have one-sixteenth (1/16) or more degree of Indian blood of the Band;

(3) Those persons who have been adopted by the Band and such adoption has been approved by the Bureau of Indian Affairs.

73. Pursuant to Pala's Articles of Association, Margarita Britten was a Pala member because her name appears on the original 1913 Pala Allotment Rolls as Allottee no. 25. The 1913 Pala Allotment Rolls also identifies Margarita Britten as having "4/4" degree Pala Indian blood.

74. On November 26, 1961, Pala adopted an ordinance to establish regulations and procedures governing the enrollment of members into the Tribe and to maintain the roll on a current basis (the "Original Enrollment Ordinance"). The Original Enrollment Ordinance provided that any person whose application for Pala membership had been rejected by the Executive Committee could appeal to the Area Director of the BIA. The Area Director shall forward to the Commissioner of Indian Affairs the appeal, supporting data, his recommendation, and the report and recommendation of the Executive Committee. If the Commissioner determines that the appellant is not eligible for enrollment, he shall notify the appellant in writing of his decision and the reasons therefor. If the application is rejected by the Commissioner, the appellant has 30 days from the mailing of the notice to file an appeal with the Secretary of the Interior, whose decision on appeal shall be final and conclusive. Accordingly, Pala's Original Ordinance provided numerous safeguards regarding enrollment and membership in Pala.

**A. Defendant Smith Secures His Power Over The Tribe And Its Members By Causing The Tribe To Adopt A New Constitution and Instituting New Enrollment Ordinances That Fail To Provide Due Process**

## **1. Pala Purportedly Adopts A New Constitution**

75. In 1987, defendant Robert Smith became Chairman of the Pala tribe. As Chairman, he began to take actions to secure his power over the Tribe and its members, particularly as the Tribe became involved in Indian gaming and became wealthy from casino money.

76. On November 22, 1994, Pala revised its Articles of Association into a constitution, as Smith convinced the Tribe that it was necessary to do so in order for Pala to participate in Indian gaming. In June 1995, the proposed constitution was reviewed by the BIA and returned with

1 recommendations for consideration. On or about November 1997, a final draft of the revised  
 2 constitution was completed. A Resolution was passed on November 19, 1997 to "adopt the Pala  
 3 Tribal Constitution to supersede the Articles of Association."<sup>5</sup>

4       77. Pala's new Constitution purported to give Pala's Executive Committee the power to  
 5 "amend and/or replace its existing Enrollment Ordinance with an Ordinance governing adoption,  
 6 loss of membership, disenrollment, and future membership." However, because the Constitution  
 7 was not properly adopted, the Executive Committee in fact lacked such power.

8       78. Among other things, the Indian Reorganization Act of 1934 ("IRA"), which sets  
 9 forth the procedures for adoption of a constitution by an Indian tribe, provides that:

10

11       Any Indian tribe shall have the right to organize for its common  
 12 welfare, and may adopt an appropriate constitution and bylaws,  
 13 and any amendments thereto, which shall become effective when -

14

15           (1) *ratified by a majority vote of the adult members of the tribe or tribes at a special election* authorized and called by the  
 16 Secretary under such rules and regulations as the Secretary may  
 17 prescribe; and

18

19           (2) approved by the Secretary pursuant to subsection (d) of this  
 20 section.

21

22       25 U.S.C. §476(a).

23

24       79. Similarly, Pala's Constitution provides that:

25

#### ARTICLE IX – AMENDMENTS AND EFFECTIVE DATE

26

##### Section 1      EFFECTIVE DATE

27

28       This Constitution shall become effective immediately after its  
 29 approval by *a majority vote of the voters voting in a duly called election* at which this Constitution is approved by the Bureau of  
 30 Indian Affairs.

31

32       80. Thus, pursuant to the Indian Reorganization Act and Pala's Constitution itself,  
 33 approval by a majority of the voters in a duly called election was required for Pala's Constitution

27       <sup>5</sup> The November 19, 1997 Constitution is referred herein as the "Constitution."

1 to become effective. However, this did not occur. Instead, Resolution 97-36, the resolution that  
2 approved the adoption of the Pala Constitution, was only approved by a vote of 27 “For” and 0  
3 “Against” in a Special Meeting – barely satisfying the quorum of at least 25 voters necessary to  
4 validate actions by the General Council. As Pala had approximately 900 members, approval by at  
5 least 300 or so adult voters would have been necessary to ratify the Constitution. Since Pala’s  
6 Constitution was not ratified by a majority vote of the adult members of Pala, it is invalid. Indeed,  
7 in response to a Freedom of Information Act (“FOIA”) request to the BIA for any documents  
8 “proving compliance with Section 476(a) described above, including the date a special election  
9 was authorized, called and conducted by the Secretary that resulted in the ratification of the Tribe’s  
10 Constitution,” the BIA responded that it could not locate any such documents after having  
11 conducted a thorough search of its files – thus confirming that no such election to ratify the Pala  
12 Constitution had occurred. Because a majority vote ratifying Pala’s Constitution did not occur, the  
13 Constitution was not properly adopted by the Tribe and therefore is not the governing document of  
14 the Tribe. Instead, Pala is still governed by its original Articles of Association.

15       81.     The fact that Pala's Constitution is invalid is substantiated by other evidence. For  
16 example, Pala's Tribal Gaming Ordinance enacted on February 14, 2000, states that the Tribe is  
17 governed by its Articles of Association, not by its Constitution, as follows:

19 WHEREAS, *the Tribe is governed by Articles of Association*  
20 approved by the Commissioner of Indian Affairs which establish a  
General Council and an Executive Committee; and

21 WHEREAS, pursuant to Article 3 of the Tribe's Articles of  
22 Association, the General Council is the governing body of the  
Tribe; and

\* \* \*

This is to certify the above Pala Gaming Authority Ordinance, Resolution 99-39 was adopted by the General Council at a duly called meeting of that Body held on October 20, 1999, at which a quorum was present by a vote of 19 in favor, 0 opposed.

1           82. Further, as recently as February 2012, Pala's website stated that "The tribe is  
 2 organized under Articles of Association approved in July 1961 and later amended in 1973 and  
 3 1980," instead of stating that it was governed by its Constitution.

4

5           **2. Defendants Enact New Enrollment Ordinances To  
 Further Secure Their Power**

6           83. As Pala constructed a casino and reaped profits therefrom, Chairman/Defendant  
 7 Smith sought to further secure his position in the Tribe, to control the Tribe and its members, and  
 8 to limit government and court oversight to ensure that he would have complete control over the  
 9 Tribe and its wealth.

10          84. In 2001, during the Tribal elections, King Freeman – a descendant of Margarita  
 11 Britten and a personal enemy of Defendant Smith – was elected Vice Chairman of the Tribe.  
 12 However, Smith disallowed a handful of votes and declared Leroy Miranda the winner. That year,  
 13 Defendant Miranda became Vice-Chairman of the Executive Committee, Defendant Theresa Nieto  
 14 became Treasurer, and defendant Perez became an Executive Council member. In 2005,  
 15 Defendant Lattin became Secretary of the Executive Committee. Once these individuals came to  
 16 power as members of Pala's Executive Committee, they enacted ordinances that gave the  
 17 Executive Committee even more power.

18          85. On December 12, 2005, Defendants, as members of Pala's Executive Committee,  
 19 revised Pala's Original Enrollment Ordinance (the "12/12/05 Revised Enrollment Ordinance"). In  
 20 Section 6 of the 12/12/05 Revised Enrollment Ordinance, Defendants gave themselves the  
 21 exclusive power to reevaluate approved membership applications, as follows:

22           A. Reevaluation of Approved Applications

23           Should the Executive Committee subsequently find that an  
 24 applicant or the person filing the application on his/her  
 25 behalf misrepresented or omitted facts that might have  
 26 made him/her ineligible for enrollment, his/her application  
 27 shall be reevaluated in accordance with the procedure for  
 processing an original application. Any decision of the  
 Executive Committee that the member's name should be

removed from the roll shall be subject to the affected member appealing that decision as specified herein.

86. Although Defendants purported to provide for appeals of their enrollment decisions in Section 6 of the Revised Enrollment Ordinance, any such appeal was only illusory. In Section 7 of the Revised Enrollment Ordinance regarding appeals, Defendants attempted to ensure that there would be no true oversight of their enrollment decisions by limiting any appeals of their enrollment decisions to only a *recommendation* by the BIA and specifically precluding review of their decisions by state and federal courts, as follows:

## Section 7. Appeals of Eligibility Decisions

A. A person whose application has been rejected shall have 30 days from the date of the mailing of the notice to him to file with the Pacific Regional Director [of the BIA] an appeal from the rejection of his application for enrollment along with a written statement specifying why he/she believes that the decision was incorrect. The Pacific Regional Director shall review the decision of the Executive Committee and the written appeals statement submitted by the applicant and *make a recommendation to the Executive Committee as to whether it should uphold or change its decision and stating the reasons for the recommendation.* When upon review the Director is satisfied that the appellant meets the provisions of Section 1, he shall so state in writing to the Executive Committee and recommend that the Executive Committee enter the applicant's name on the membership roll. If the Director determines that an applicant is not eligible for enrollment, he shall notify the Executive Committee in writing of his recommendation and the reasons therefore. *Within thirty days of receipt of the recommendation of the Director, the Executive Committee shall meet and consider that recommendation and make a final decision on the appeal of decision. The decision of the Executive Committee shall be final.*

C. *The Courts of the State of California or of the United States shall not have jurisdiction over issues relating to enrollment in the Pala Band.*

1 Prior to the foregoing changes made by Defendants, Pala's Original Enrollment Ordinance  
 2 provided for oversight by the BIA over the enrollment process and provided that "[t]he decision of  
 3 the Secretary on appeal shall be final and conclusive" with respect to enrollment appeals. In  
 4 addition, the Original Ordinance did not purport to exclude courts from considering issues relating  
 5 to enrollments in Pala.

6       87. To prevent the BIA from nullifying their Revised Enrollment Ordinance,  
 7 Defendants further inserted the language in the Revised Enrollment Ordinance that: "BE IT  
 8 FURTHER KNOWN that *this revised ordinance shall become effective upon approval by the*  
 9 *Executive Committee of the Pala Band of Mission Indians without further approval of the*  
 10 *Secretary of Interior or his or her delegated representative.*"

11       88. Thus, through their adoption of the Revised Enrollment Ordinance, Defendants  
 12 sought to take away any review of their decisions and any challenge to the Revised Enrollment  
 13 Ordinance itself. In so doing, Defendants attempted to ensure that they had absolute and complete  
 14 control over the Tribe, since they now had the ability to arbitrarily and capriciously eliminate any  
 15 Pala members from the Tribe at will. Because any Tribal member who opposed them could be  
 16 immediately disenrolled and thus lose all their Tribal privileges, including their right to vote and to  
 17 petition, Defendants ensured that they would continue to stay in power and maintain their reign of  
 18 dominance over the Tribe.

19       89. On July 22, 2009, Defendants again revised Pala's enrollment ordinance (the  
 20 "7/22/09 Revised Enrollment Ordinance"). The 7/22/09 Revised Enrollment Ordinance was  
 21 substantially similar to the 12/12/05 Revised Enrollment Ordinance, except that whereas the  
 22 12/12/05 Revised Enrollment Ordinance stated that it was to establish regulations governing  
 23 procedures for enrollment and for keeping the roll on a current basis, the 7/22/09 Revised  
 24 Enrollment Ordinance added that it would establish "the requirements and regulations governing  
 25 **membership**" as well. Thus, Defendants purported to give themselves power to govern  
 26 membership – not merely new enrollments – in the Tribe.

27  
 28

1       90. In addition, the 7/22/09 Revised Enrollment Ordinance provided that the Executive  
2 Committee could grant applicants provisional membership into the Tribe to give an individual  
3 immediate eligibility for Tribal benefits, which was previously unavailable in the 12/12/05 Revised  
4 Enrollment Ordinance. By making these revisions, Defendants gave themselves the additional  
5 power to add friends and political supporters as new Pala members at will, regardless of whether  
6 they actually qualified to be members.

## **B. Defendants Disenroll The Britten Descendants Without Due Process.**

9        91. Once Defendants secured their power through the foregoing changes in the Tribal  
10      Constitution and the Revised Enrollment Ordinances on 7/22/09 and 12/12/05, Defendants were  
11      able to transform Pala from a tribe governed by its adult members, or the Tribal Council, to a  
12      tyrannical oligarchy. This was especially important to the Defendants because as Pala became  
13      flush with cash from the casinos, Pala members began to raise questions. Among other things,  
14      questions were raised concerning the propriety of Tribal elections, Defendants' financial dealings,  
15      Defendants' motives for entering into certain contracts on behalf of the Tribe, Defendants'  
16      personal use of the Tribal jet and other Tribal assets, and the construction of a raceway on the  
17      reservation that had not been approved by the General Council. Indeed, certain Pala members who  
18      had raised questions in January 2009 concerning the construction of the raceway, who had asked to  
19      review the financials (and were told that they were not available for review), and who brought up  
20      at a General Council Meeting on June 9, 2010 the fact that Defendant Lattin should have been  
21      automatically removed from office because he was a convicted felon at the time he was nominated  
22      and ultimately took office, were banned by Defendants from attending Pala's General Council  
23      meetings and denied their per capita payments for one year.

24        92. On November 6, 2009, one of the Defendants, Pala Vice Chairman Leroy Miranda,  
25 was arrested by the police for allegedly soliciting a male prostitute in an adult book store. As a  
26 result of the incident, Miranda pled guilty to a misdemeanor charge of lewd conduct in February  
27 2010. Under terms of the plea, Miranda agreed to pay a fine, enroll in an AIDS education  
28 program, stay away from the adult book store, and wear an electronic monitoring device.

1       93. In March 2011, the media reported on the incident and additionally reported that  
2 Miranda had violated his parole by failing to complete the electronic monitoring program. After  
3 learning this news, King Freeman, a former Chairman of the Tribe and a descendant of Margarita  
4 Britten, began a petition effort to recall Miranda.

5       94. Upon discovering that Freeman had dared to circulate a petition to remove  
6 defendant Miranda, Defendants conspired to disenroll Freeman's family, the Britten Descendants.  
7 In March 2011, Defendants caused Pala to withdraw its membership from the Intertribal Courts of  
8 Southern California ("Intertribal Courts"). Pala members would then have no recourse in tribal  
9 courts to address their grievances against Defendants once the Defendants began their wave of  
10 disenrollments.

11       95. The Intertribal Courts are tribal courts set up by member tribes in Southern  
12 California. Under the Inter-Governmental Agreement regulating its members, in order to  
13 withdraw membership from the Intertribal Courts, a tribe was required to provide the Chairperson  
14 of the Tribal Judicial Council of Southern California with at least a 30-day written notice  
15 accompanied by a written resolution passed by the tribal government authorizing the tribe's  
16 withdrawal from the Intertribal Courts. Instead of providing official notice to withdraw from the  
17 Intertribal Courts, however, Pala Secretary/Defendant Lattin merely sent a letter in March 2011 to  
18 withdraw, and did not include any accompanying written resolution authorizing Pala's withdrawal  
19 in his letter. Although the letter of withdrawal from defendant Lattin did not constitute sufficient  
20 notice and was not valid pursuant to the Governing Agreement between Pala and the Intertribal  
21 Courts, the Board of the Intertribal Courts nonetheless accepted Pala's abrupt withdrawal. Pala's  
22 withdrawal from the Intertribal Courts was so rushed that, whereas it normally took approximately  
23 four to six months for a tribe to withdraw from the Intertribal Courts in order to ensure a smooth  
24 transition, Pala's withdrawal took about half that time.

25       96. Defendants were eager to withdraw Pala from the Intertribal Courts as part of their  
26 scheme and conspiracy to deprive Plaintiffs of their civil rights and property rights. The Intertribal  
27 Courts would have provided the parties with access to court hearings and appeals, and the  
28

1 Intertribal Court's records would have been available to the public. By withdrawing from the  
2 Intertribal Courts, Defendants acted to ensure that they would be above the law and that Plaintiffs  
3 would not have their day in court. Accordingly, Defendants made sure that Plaintiffs had no legal  
4 recourse.

5       97. On May 2, 2011, Tribal Secretary Kilma Lattin received the petition initiated by  
6 King Freeman to have a special meeting regarding the gross misconduct of defendant Miranda.  
7 Although the petition garnered enough votes, according to a letter from Lattin, many of the Tribal  
8 members who had signed the petition subsequently requested to have their names taken off the  
9 petition such that it did not meet the minimum signatures required. Accordingly, Defendants  
10 disqualified the petition and a special meeting was never held to discuss the recall of Miranda.

11       98. The recall effort by Freeman to challenge Pala's Executive Committee, however,  
12 greatly upset Tribal Chairman/Defendant Smith. During a heated General Council meeting, Smith  
13 said to Freeman, "your kids are off the rolls."

14       99. On May 26, 2011, without providing notice or hearing to the persons affected,  
15 Defendants held a meeting during which they decided to disenroll eight Britten Descendants from  
16 the Tribe – including three of Freeman's children and other relatives. However, the next day, on  
17 May 27, 2011, Chairman/Defendant Smith falsely assured some Pala members in a private  
18 conversation that rumors of disenrollments were not true.

19       100. On June 1, 2011, the eight Britten Descendants discovered through a letter from  
20 Pala Secretary/Defendant Lattin that they had been disenrolled. According to Lattin's letter, Pala's  
21 Enrollment Committee – which was really the Executive Committee made up of the Defendants  
22 because Pala did not have a separate Enrollment Committee – had determined that they were not  
23 eligible for enrollment and, as such, the Enrollment Committee "wishes to take their names off the  
24 Tribal rolls effective June 1, 2011." The disenrollment of these eight Britten Descendants

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1 terminated their Tribal citizenship, including their right to petition or to vote in Tribal elections,  
 2 and their rights to all Tribal distributions and benefits.<sup>6</sup>

3       101. The disenrollment and consequent disenfranchisement of the eight Britten  
 4 Descendants by the Defendants was done without due process or equal protection, as required  
 5 under Pala's Constitution, Pala's Original and Revised Enrollment Ordinances, the Indian Civil  
 6 Rights Act, and other laws and statutes. Prior to being taken off the Tribal rolls, these eight Pala  
 7 members received no notice that they were being considered for disenrollment, had no opportunity  
 8 to present evidence or be heard, and were summarily disenrolled arbitrarily and capriciously. The  
 9 Defendants acted outside the limits of their authority, and they violated the due process and civil  
 10 rights of the Britten Descendants. Defendants effectively used Margarita Britten's blood quantum  
 11 as a ruse to rid themselves of political enemies and adversaries.

12

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14       <sup>6</sup> According to Lattin's June 1, 2011 letter, the disenrollments occurred after the Executive  
 15 Committee reviewed the 1928 enrollment application of certain Britten Descendants. However,  
 16 the 1928 applications could not serve as the basis for disenrollment. A letter from the BIA to  
 17 Chairman/Defendant Robert Smith explained that "these [1928] applications do not denote tribal  
 18 membership or enrollment" and that the applications were to be used only in connection with  
 19 legislation enacted by Congress in 1928 which permitted Indians to bring suit against the United  
 20 States to seek compensation for lands taken from them. Moreover, Pala's governing documents  
 21 explicitly state that only the **1913 Allotment Rolls** is to be used for enrollment purposes.

22

22 Lattin's letter also claimed that "proof" that the eight Britten Descendants should not be enrolled  
 23 came from a July 29, 1985 letter by Tom W. Dowell ("Dowell"), then acting Area Director of the  
 24 BIA. In that letter, Dowell stated that the records on file at the BIA's Southern California Agency  
 25 and Sacramento Area Office could not substantiate that Margarita Britten was a 4/4 degree Indian.  
 26 However, since Dowell's July 29, 1985 letter, the BIA has conducted an extensive investigation  
 27 into Margarita Britten's blood degree, including obtaining various records and testimony and  
 28 comparing the allotment roll housed with the Southern California Agency with the original 1913  
 allotment roll housed in Washington, D.C. Following this extensive investigation by the BIA, the  
 Assistant Secretary of Indian Affairs – the highest federal authority in the BIA – concluded in a  
*final* decision that Margarita Britten was a full-blooded Pala Indian. As such, a subsequent June 7,  
 1989 letter from Dowell to Pala's Executive Committee states that the BIA's Central Office  
 "concluded that Mrs. Britten's blood degree is fullblood." Because the BIA later substantiated that  
 Margarita Britten was a full-blooded Pala Indian, the Defendants' reliance on an earlier letter from  
 the acting Area Director of the BIA to justify their disenrollment of the Britten Descendants is  
 completely baseless. Indeed, while Pala's Enrollment Ordinance provides that "new information"  
 could be used to re-evaluate an existing or old application, the Dowell letter did not constitute  
 "new information" and, in any event, was contrary to the BIA's ultimate finding after it had  
 conducted a thorough investigation.

29

1       102. On June 29, 2011, the eight disenrolled Britten Descendants appealed the  
 2 Defendants' decision to the BIA. However, Defendants had already cut off their Pala rights and  
 3 benefits as of June 1, 2011, without awaiting the BIA's recommendation.

4       103. Thereafter, a flyer regarding the Executive Committee's unjustified actions was  
 5 distributed. The flyer stated:

6  
 7       **OUTRIGHT LIES!** There are many questions regarding the odd  
 8 behavior of the Executive Committee. Why does Chairman Smith  
 9 keep telling members that the appeal for the eight he took off the  
 10 rolls was not filed on time? He has publicly stated this to many  
 11 people, to the media and at the General Council meeting. This is  
 12 an outright lie! The appeal was filed in a timely manner with the  
 Pacific Regional Office of the BIA on June 29, 2011, two days  
 before the 30 day deadline. It is currently being reviewed by the  
 BIA and the BIA has confirmed that it is in compliance with the  
 time frame allotted by the tribal ordinance.

13       Also, the information that Robert Smith handed out at the last  
 14 General Council Meeting was filled with inaccuracies. The appeal  
 15 has about 13 supporting documents. These are official documents  
 16 upon which the BIA based the enrollment of the Margarita Brittain  
 17 descendants. These are the documents that adhere to our Articles  
 18 of Association and Constitution. None of these documents were  
 19 ever used when the Executive Committee decided to disenroll the  
 20 eight individuals. If the Executive Committee acted appropriately  
 21 in this situation, they would see that there are no reasonable  
 22 grounds for disenrollment. The bottom line is the Executive  
 23 Committee is not adhering to our governing documents and they  
 24 misappropriated their power to disenroll these eight people.

25       **Tribal members! Beware! If this Executive Committee**  
 26 **continues to utilize illegal documentation to determine**  
**membership, not one of you will be safe!** Our Articles of  
 27 Association and Constitution state that our membership base roll is  
 the 1913 Allotment rolls. What the Executive Committee doesn't  
 seem to understand is that by illegally using the 1928 Indian  
 Judgment Rolls (**the tribe has never** used the 1928 Indian  
 Judgment Rolls to determine membership), they are opening a  
 HUGE "can of worms" as there are many issues that will arise for  
 many families with the tribe. **We believe that everyone should**  
**be treated the same, without prejudice.** With that said, if the  
 Executive Committee continues along this path, then there is  
 damning evidence in those 1928 Indian Judgment rolls that would

1 affect many tribal members in a negative way. The bottom line is  
 2 that the 1928 Indian Judgment Rolls are filled with errors, mistakes  
 3 and some very eye opening truths. It's no secret that Margarita  
 4 Brittain's descendants lost their blood quantum by those very same  
 5 1928 Indian Judgment Rolls; her descendants appealed to the BIA  
 6 on this matter, the BIA investigated and made a final decision on  
 7 this matter and the Tribe voted in 1985 to change her descendant's  
 8 blood quantum back to the correct blood quantum. The bottom  
 9 line is, the tribe should just adhere to our Articles of Association  
 10 and Constitution, which states that the 1913 Allotment Roll is the  
 11 base roll and stop playing games with these innocent people.  
 12

13           *People want to know how can the Executive/Enrollment*  
 14           *Committee disenroll only eight family members and not the rest*  
 15           *of family who are 1/16<sup>th</sup> descendants?* This is how: Robert Smith  
 16           has turned this "General Council" tribe into a dictatorship. He  
 17           and his Executive Committee are abusing their power in the most  
 18           frightening way. It is clear that Margarita Brittain is still  
 19           recognized as 4/4 Cupeño and only eight of her descendants are  
 20           being targeted by the Executive/Enrollment Committee for  
 21           persecution. We know that Robert and certain committee members  
 22           are abusing their leadership powers in an attempt to hurt King  
 23           Freeman and to control him (all because of a personal grudge).  
 24           Robert and crew have treated these eight with prejudice and this is  
 25           clearly an outright act of discrimination. The reason why Robert  
 26           Smith and his gang have not gone after the rest of the descendants  
 27           is because he wants to hurt King, his family and keep him in his  
 28           "place." These actions taken by this Executive Committee are  
 1           unconstitutional and wrong.

2           Chairman Smith stated at the General Council Meeting "That's it!  
 3           And it's over!" Chairman Smith, you need to know that it's not  
 4           over yet! It's just the beginning ...

5           [Emphasis in original]

6           104. On September 30, 2011, obviously angered by the contents of the flyer which  
 7           challenged the decision of the Executive Committee to disenroll the eight Britten Descendants,  
 8           Chairman/Defendant Smith sent a letter to all enrolled adult members of the General Council,  
 9           retorting:

10           As your Tribal Chairman of The Pala Band of Mission Indians, it  
 11           is imperative that I bring an issue to you as members of the  
 12           General Council. Reyes "King" Freeman continues to handout  
 13           Tribal information to everyone that steps foot in his Pala Store. He  
 14           has distributed information in the past that depicts lies and attacks

1 the character of our Executive Council here in our Reservation.  
2 This latest flyer is not only threatening but full of lies that he  
3 continues to spew out to the Media, Members and non-Members in  
4 our Community.

5 King Freeman has lived on his own lies for over 20 years as a  
6 member in our Band and in our community. The Pala Band of  
7 Mission Indians voting membership need to take a firm stand and  
8 stay strong as an entity and not allow this to continue. ***He wants  
the rest of his family who are 1/16 descendants, disenrolled!!!  
Don't take my word for it, see his flyer!!!***

9 Please review the following: In the constitution adopted by the  
10 voting membership in November 1994,

11 **Section 3: Membership Roll states:**

12 The Executive Committee shall keep membership  
13 roll current.

14 **Section 4: Loss of Membership states:**

15 Procedures for disenrollment if any will be  
16 established in an ordinance as part of the  
17 Enrollment Ordinance. Such procedures shall  
18 provide that the member receives due process and  
19 equal protection as required by the Indian Civil  
20 Rights Act.

21 ***We don't need this kind of Attention that King Freeman is  
drawing to our tribe and we surely don't deserve this type of  
harassment from a member in our General Body that gives this  
information to local papers of which he has done more than  
once.***

22 The purpose and powers of the Pala Band of Mission Indians shall  
23 be to protect and promote the welfare and best interest of the  
24 members of our Band and to protect and exercise the Pala Band's  
25 inheriting rights as a Federally-recognized Indian tribe. Please join  
26 in with me to stand firm on our Constitutional rights for all  
27 members involved.

28 Submitted by,

29 Robert H. Smith  
30 Tribal Chairman  
31 Pala Band of Mission Indians

1       105. On October 24, 2011, various Britten Descendants received a letter from Smith  
2 which stated: "The enrollment committee needs to update enrollment files. There were gaps in the  
3 information we have on file, and particular questions arose over the blood quantum of Margarita  
4 Britten." The letter, which merely notified the recipients that the enrollment files needed to be  
5 "updated" did not apprise them that they were being considered for disenrollment or advise them  
6 of any disenrollment proceedings.

7       106. On February 1, 2012, carrying out his threat to purge the Tribe of the rest of  
8 Freeman's relatives, Chairman Smith and the other Defendants expelled 154 other Britten  
9 Descendants from Pala. Together, these disenrolled Pala members account of approximately 15  
10 percent of the Tribe's population. These individuals will no longer be able to vote in Tribal  
11 elections, to participate in Tribal Council meetings, or to petition for the removal of any of the  
12 Defendants. In addition, their per capita payments and other benefits immediately ceased. This  
13 occurred despite the fact there is nothing in the Tribe's governing documents allowing Defendants  
14 to immediately terminate members' rights and benefits.

15       107. Like the first eight disenrollees, Plaintiffs and the other 154 Britten Descendants  
16 who were disenrolled on February 1, 2012, also did not receive due process before they were  
17 disenrolled. They received no notice they were being considered for disenrollment, did not have a  
18 hearing, and had no opportunity to present evidence. They only received a subsequent letter  
19 notifying them that they were no longer members of Pala.

20       108. When the Tribe's spokesman, Doug Elmets, was asked by news reporters why these  
21 Pala members were disenrolled, he refused to explain the reason. Elmets, however, told reporters  
22 that under the Tribe's constitution, those who have been expelled can appeal to the federal Bureau  
23 of Indian Affairs. However, in reality, any such appeal was only illusory because Defendants had  
24 ensured that they had the final say on the enrollment decisions by allowing the BIA to only give a  
25 "recommendation" upon appeal and by closing off Plaintiffs' and other disenrolled Britten  
26 Descendants' access to the Intertribal Courts.

27  
28

1           109. On February 17, 2012, 79 members of Pala's General Council signed a petition to  
 2 request a special meeting of the general council regarding the disenrollment of the Britten  
 3 Descendants. The petition stated:

4           Pursuant to Section 3(B) of the Constitution of Pala Band of Mission  
 5 Indians, Special Meetings, we the undersigned Tribal Members request a  
 6 special meeting of the general council to discuss the disenrollment of the  
 7 descendants of Margarita Britten, a documented full blood Cupeno Indian.  
 8 We the undersigned disagree with the unjust enrollments of said  
 9 descendants and wish for any disenrollments to seize [sic] immediately.  
 10 We also would like for the enrollments to remain in accordance with the  
 11 original 1913 allotment rolls of the Pala Band of Mission Indians for all  
 12 families and the names of those on the list to disenroll remain tribal  
 13 members indefinitely. We the undersigned Tribal Members in accordance  
 14 with the Constitution request that the Executive Committee call a special  
 15 meeting within fifteen (15) days from the date the petition is received by  
 16 the Pala Tribal Secretary.

17           110. In response to this petition, Chairman/Defendant Smith sent a letter to Tribal  
 18 Members claiming that the "petition is circulating under misleading pretenses" and that "[t]he  
 19 merits of this petition are false." Moreover, despite the petition having garnered more than enough  
 20 votes for a Special Meeting – in fact, almost three times more votes than the number of votes used  
 21 to purportedly adopt the Constitution that gave Smith and the other Defendants indiscriminate  
 22 disenrollment powers – in further disregard of the rights of members of the Tribe and in further  
 abuse of their positions, Pala's Executive Committee rejected the petition and refused to call a  
 meeting to discuss the disenrollment of the Britten Descendants, claiming that "it violates the Pala  
 Constitution and Enrollment Ordinance." Upon information and belief, Defendants are planning to  
 institute a "treason ordinance" to put an end to any other attempts by Pala members to challenge  
 their authority so that they could continue their reign of dominance.

23  
 24           **C. Defendants Lack Authority to Revisit the Issue of Margarita  
 25           Britten's Blood Degree**

26           111. Defendants also had no authority to disenroll the Britten Descendants because the  
 27 issue of Margarita Britten's blood degree had already been conclusively determined. Pala's  
 28 General Council had previously voted to determine that Margarita Britten was a full-blood Indian.

1 Also, the BIA, after conducting an extensive investigation, had made a final determination that  
2 Margarita Britten was a full-blooded Pala Indian.

3 112. On February 22, 1984, Pala's General Council – comprised of all members of Pala  
4 18 years and older – voted to correct Margarita Britten's blood degree to 4/4 Pala Indian after  
5 unauthorized handwritten changes had been made to the membership rolls. Because the issue of  
6 Margarita Britten's blood degree was voted on by Pala's General Council, it cannot be revisited  
7 over a decade later by Defendants, members of Pala's Executive Committee.

8 113. Significantly, Pala's Constitution provides that the main governing body of the  
9 Tribe is the General Council, not the Executive Committee. According to the Constitution:

10 ARTICLE III – GENERAL COUNCIL

11 Section 1 GOVERNING BODY

12 *The governing body of the Pala Band shall be the General Council,  
13 which shall consist of all members of the Pala Band who are eighteen  
14 years of age and older.*

15 \* \* \*

16 Section 11 POWERS AND DUTIES OF THE EXECUTIVE  
17 COMMITTEE

18 *The Executive Committee shall have the following powers and duties . . .*

19 *A. Cause the effectuation of all ordinances, resolutions or  
20 other enactments of the General Council . . .*

21 Because the Executive Committee is required to effectuate the resolutions of the General Council,  
22 Defendants were required to implement the General Council's directives from its February 22,  
23 1984 meeting – specifically, its resolution that Margarita Britten's blood degree was 4/4.  
24 Defendants had no power to arbitrarily decide otherwise.

25 114. Furthermore, the BIA has repeatedly concluded that Margarita Britten was a full-  
26 blooded Pala Indian. In letters to three of the descendants of Margarita Britten dated May 17,  
27 1989, Assistant Secretary of Indian Affairs, Donald Asbra, stated that, after a thorough

1 investigation including sworn statements, family history cards and other documents, “*we have*  
 2 *concluded that Margarita Britten was a fullblood Indian.* We are directing that the blood degree  
 3 of her descendants be reviewed and corrected accordingly. . . . This decision is based on authority  
 4 delegated to me by the Secretary of the Interior and *is final* for the Department.”

5       115. Likewise, on September 11, 1989, in a letter to the then-Chairperson of Pala, Acting  
 6 Assistant Secretary of the BIA, Walter Mills, reiterated that “*the decision of the Assistant*  
 7 *Secretary – Indian Affairs is final for all purposes. . . . The issue of Margarita Britten’s blood*  
 8 *degree has been determined.*”

9       116. In April, 1994, the Department of Interior also notified various descendants of  
 10 Margarita Britten that the Department had conclusively “determined that *Margarita Brittain*  
 11 *possessed 4/4 degree Indian blood.*” The letter explained that “[o]ur Tribal Enrollment Specialist,  
 12 has completed extensive research to identify all descendants of Margarita Brittain and determine  
 13 the correct blood degrees involving five generations. . . . Our staff met with the Pala Business  
 14 Committee on March 2, 1994, and provided them with our findings and supporting documentation,  
 15 including tree charts. We advised them that the correct blood degrees should also be noted on their  
 16 membership roll.” Because neither the Tribe nor its Executive Committee filed an action to  
 17 challenge or to appeal the final decision of the BIA regarding Margarita Britten’s blood degree,  
 18 they are bound by the decision.

19       117. Indeed, even Chairman/Defendant Smith has previously acknowledged that  
 20 Margarita Britten was a full-blooded Pala Indian. On November 15, 1995, Barbara Gonzales-  
 21 Lyons, Vice Chairman of the Agua Caliente Band of Cahuilla Indians, asked Pala for verification  
 22 of certain members in order to correct Agua Caliente’s tribal membership rolls. The letter from  
 23 Gonzales-Lyons sought verification of the blood quantum of Margarita Britten’s daughter, Casilda  
 24 Welmas; the blood quantum of Casilda’s husband, Cayetan; and the blood quantum of Casilda’s  
 25 children, Jose, Rufina and Miguel. In response to that letter, defendant Smith, as Chairman of the  
 26 Pala Tribe, wrote:

27                   After researching our Tribal Enrollment Records, *we show*  
 28 *Cayetan & Casilda Welmas each possess ½ degree Indian blood*

1                   *as stated in the Pala Allotment Roll of November 3, 1913.* Jose,  
 2 Refina and Miguel Welmas also possess ½ degree Indian blood.  
 3

4                   Because Margarita Britten had married a non-Indian, her daughter, Casilda Welmas, necessarily  
 5 had ½ degree Indian blood. As such, Smith had acknowledged that Margarita Britten was a full-  
 6 blooded Pala Indian.

7                   118. Likewise, Stanley McGarr, who was then-Secretary of the Pala Tribe in 1995, also  
 8 verified in a letter dated October 23, 1995 to the Agua Caliente Band that “[t]he Pala Allotment  
 9 Roll (PAR) approved by the Secretary of the Interior November 3, 1913, and the Pala Census (PC)  
 10 for the year 1919, *show Margarita Britten to be the following: . . . 4/4 Degree Indian Blood*  
 11 (PAR). Seven Children, Casilda, Miguela, Maria, Santiago, Esperanza, Juans and Martha (PAR).  
 12 All Children to be ½ Degree Indian Blood (PAR).”

13                   119. Because the issue of Margarita Britten’s blood degree had been previously  
 14 conclusively determined, the issue cannot be revisited. Nothing in Pala’s Constitution or Tribal  
 15 ordinances allows Defendants to revisit blood quantum issues that had already been finally  
 16 determined, and Defendants exceeded the authority the Tribe granted them and acted outside their  
 17 authority in revisiting this issue in order to justify their unlawful disenrollment of the Britten  
 18 Descendants. Defendants cannot rewrite history at will to mask their personal agenda.

19                   **D. Defendants Exceed The Authority Granted Them Under Pala’s  
 20 Constitution And Enrollment Ordinance**

21                   120. Additionally, Defendants exceeded their authority in disenrolling the Britten  
 22 Descendants because they did not have power to do so under either Pala’s Constitution or any of  
 23 its ordinances.

24                   121. Even assuming the validity of Pala’s Constitution, it did not authorize the Executive  
 25 Committee to pass an ordinance empowering itself to remove persons from the Tribal rolls due to  
 26 misrepresentation or omission contained in membership applications from the 1920s, or over  
 27 eighty years ago. As set forth in Article II, Section 2, of the Constitution:  
 28

1                   Section 2. MEMBERSHIP ROLL

2                   The Executive Committee shall keep the membership roll current  
3                   annually by striking therefrom the names of persons who have  
4                   relinquished in writing their membership in the Band and of  
5                   deceased members upon receipt of a death certificate or other  
6                   evidence of death, and by adding the names of children born to  
7                   members who meet the requirements.

8                   Consequently, the Executive Committee only had the power to only add or delete persons from the  
9                   Tribal rolls as members die, become born, or as membership is relinquished. It did not have power  
10                  to delete members from the Tribal rolls for other reasons.

11                  122. Additionally, Article II, Section 4, of the Constitution provides:

12                  Procedures for disenrollment, if any, will be established in an  
13                  Ordinance or as part of the Enrollment Ordinance. Such  
14                  procedures shall provide that the member receives due process and  
15                  equal protection as required by the Indian Civil Rights Act.

16                  Accordingly, Pala's Constitution did not give authority to the Executive Committee to *initiate*  
17                  disenrollments, which they did here – but only to set up *procedures* for disenrollments. Moreover,  
18                  the Constitution required that any disenrollment procedures must provide members with due  
19                  process and equal protection – which Defendants failed to provide. Thus, Defendants acted  
20                  manifestly and palpably beyond their authority when they disenrolled the Britten Descendants.

21                  123. Furthermore, the Revised Enrollment Ordinances purporting to give Defendants  
22                  power over the disenrollments were unauthorized. At a General Council meeting on January 9,  
23                  2002, the Tribe considered whether enrollment and membership requirements should remain “as is  
24                  for the next ten (10) years.” The “motion to approve moratorium on enrolment [sic] requirements  
25                  for ten (10) years” was passed. The moratorium thus restricted Defendants from taking any action  
26                  with respect to any Pala member’s status or to implement ordinances that gave themselves  
27                  additional power over enrollments. In addition, since the BIA had final approval over membership  
28                  applications as of 2002, when the moratorium was passed, the BIA has final say on enrollments,  
not Defendants.

1       124. Also, the Revised Enrollment Ordinances adopted by the Defendants on 12/12/05  
2 and 7/22/09 were only meant to apply to *new* and *future* enrollment applications. The Revised  
3 Enrollment Ordinances both state, in the first sentence describing the ordinance, that the ordinance  
4 is “[a]n ordinance to establish regulations and procedures governing enrollment of members *into*  
5 *the Band* and to maintain the roll on a current basis.” These Ordinances also declared that, “the  
6 Executive Committee of the Pala Band, by adoption of this revised ordinance, *does not intend to*  
7 *alter or change the membership status of individuals whose membership has already been*  
8 *approved and who are currently listed on the membership roll of the Pala Band of Mission*  
9 *Indians . . .*” Although the Revised Enrollment Ordinances provide that the Executive Committee  
10 can disenroll a person if such person has misrepresented or omitted information “that might have  
11 made him/her ineligible for disenrollment,” this provision was clearly meant to apply only to  
12 *recent* applications. Indeed, the Revised Enrollment Ordinances’ numerous references to *new*  
13 enrollments using language such as “Persons *to be* Enrolled” and “persons who are determined *to*  
14 *be* eligible for membership,” coupled with the explicit declaration that the Revised Enrollment  
15 Ordinances are not intended to alter or change the membership status of individuals whose  
16 membership has already been approved and who are currently listed on the membership roll of the  
17 Pala Band of Mission Indians – demonstrate that the Revised Enrollment Ordinances were only  
18 supposed to regulate the enrollment of new or future members, *not* existing members who had  
19 long been admitted into the Tribe. Most certainly, they were not meant to revisit the veracity of  
20 enrollment applications from 1928 – or 84 years ago. Indeed, Annalee Trujillo, who had served on  
21 the Executive Committee, stated in a declaration that she had voted to approve the Revised  
22 Enrollment Ordinances because she understood that they were not intended to change the  
23 membership status of enrolled members and that she believed “no one already approved on the roll  
24 would be taken off the official federally approved membership roll.”

25       125. Additionally, the Revised Enrollment Ordinances provide that the Executive  
26 Committee can remove someone from the Tribal roll only where “an applicant or the person filing  
27 the application on his/her behalf misrepresented or omitted facts that might have made him/her  
28

ineligible for enrollment . . . ” There was clearly no misrepresentation or omission by any of the Britten Descendants, since both Pala’s Tribal Council and the BIA had each previously concluded that Margarita Britten was a full-blooded Pala Indian.

4       126. The Revised Enrollment Ordinances further state that where an application is  
5 reevaluated because of a misrepresentation or omission, such “application shall be reevaluated *in*  
6 *accordance with the procedures for processing an original application.*” To process an original  
7 application, the Executive Committee was required to make an initial determination on the  
8 application before sending it to the BIA for its review and recommendation, and then the  
9 Executive Committee was supposed to approve or disapprove of the application only “[a]fter a  
10 response is received from the Bureau of Indian Affairs.” Here, Defendants’ disenrollment of  
11 Plaintiffs and other Britten Descendants was unauthorized and improper because it was done  
12 before they had received a response from the BIA.

13           127. Finally, Defendants had no authority to disenroll the Britten Descendants because at  
14 least two of the six Executive Committee members, Defendants Miranda and Lattin, should not  
15 have been serving on the Executive Committee when they participated in the disenrollment  
16 decision. Pala's Constitution prevents a person from being nominated for the Executive  
17 Committee if he or she has been convicted of a felony or any other criminal offense, and it requires  
18 the removal of an Executive Committee member if the officer commits any crime or engaged in  
19 gross misconduct, as follows:

## ARTICLE V – EXECUTIVE COMMITTEE

\* \* \*

## **Section 2.      QUALIFICATIONS**

B. Before the names of a person who has been nominated can be put on that ballot, that person must complete a form provided by the Executive Committee and *certify under penalty of perjury that he/she has not been convicted of a felony or any other criminal offense* included above. The Executive Committee will verify that there has been no such conviction(s). The General Council may make an exception for vehicle related felony traffic offenses or for offenses which occurred more than ten years earlier.

1

\* \* \*

2

## Section 5. VACANCIES

3

*If an officer shall . . . be found guilty of a felony in any State or  
Federal court . . . a vacancy in the office shall be automatically  
created. . . .*

4

\* \* \*

5

## Section 7. *REMOVAL*

6

A. Failure to attend three (3) consecutive meetings without valid excuse, including regular, emergency and special meetings; Provided that the member has received notice of the meetings;

7

B. *Gross misconduct in office;*

8

C. Incapacity from physical or mental disability, to the extent that he/she is incapable of exercising judgment about or attending to the business of the Executive Committee;

9

D. *Conviction of a crime under Federal, State or Tribal Law while holding office.*

10

11 128. In August 2003, Defendant Leroy Miranda, while serving on Pala's Executive  
12 Committee, was charged under California Penal Code ("PC") 245(A)(1) for assault with a deadly  
13 weapon (a felony), PC 417(A)(2) for brandishing a firearm (a misdemeanor), and PC M273A(A)  
14 for willfully harming and/or injury to child (a misdemeanor). He pled guilty and was convicted of  
15 all charges. Miranda violated probation in that instance. On November 6, 2009, Defendant  
16 Miranda was also arrested and charged with a lewd act under California Penal Code ("PC")  
17 647(A). He pled guilty to the misdemeanor and was convicted. He was also later found to be in  
18 violation of his probation by the Court. Because Miranda had been convicted of various crimes  
19 while in office, he should not have been able to serve on the Executive Committee and thus had no  
20 authority to participate in the decisions to disenroll members of the Tribe. Moreover, despite the  
21 fact that he should have automatically been vacated from office, Miranda remains Pala's Vice-  
22 Chairman to this day.  
23  
24  
25  
26  
27  
28

1       129. Likewise, Defendant Kilma Lattin had no authority to participate in the  
 2 disenrollment decisions. Public records indicate that on December 25, 2006, Lattin was cited for  
 3 “assault with firearm on person” and for “threaten crime with intent to terrorize.” He was  
 4 subsequently charged under PC 246.3 for willful discharge of a firearm in a negligent manner  
 5 which could result in injury or death to a person, with special allegations made under PC  
 6 1192.7(c)(23) for personally using a deadly weapon – making it a “serious felony.” On February  
 7 7, 2012, Lattin’s motion to reduce the charge to a misdemeanor was denied, and he was ordered  
 8 “to stay at 100 yards away from victims and witnesses, except when conducting official tribal  
 9 business and meetings.” On July 19, 2007, he withdrew his “not guilty” plea and pled “guilty” to  
 10 the crime. On September 10, 2010, the Court granted Lattin’s request to reduce the charge to a  
 11 misdemeanor after he had served three years of probation; however, the Court’s order specifically  
 12 stated that “This order does not permit a person prohibited from holding public office as a result of  
 13 the conviction to hold public office.” Thus, Lattin also should not have been serving on Pala’s  
 14 Executive Committee when the Executive Committee disenrolled the Britten Descendants.

15       130. Because at least two of the five Executive Committee members who had  
 16 participated in the decision regarding the Britten disenrollments had criminal records, these  
 17 disenrollments are absolutely invalid. For the same reason, the Revised Enrollment Ordinances  
 18 adopted by the Executive Committee on 12/12/05 and 7/22/09 are invalid because these  
 19 Defendants should not have participated in the adoption of the Revised Enrollment Ordinances.  
 20

21                   **E. Plaintiffs Fail To Receive the Required Due Process or Equal  
 Protection**

22       131. Defendants’ disenrollment of the Plaintiffs and the Britten Descendants are also  
 23 invalid because the disenrollees were deprived of due process and equal protection.

24       132. Pala’s Constitution mandates that “*[p]rocedures for disenrollment . . . shall*  
 25 *provide that the member receives due process and equal protection as required by the Indian*  
 26 *Civil Rights Act.*” The Constitution further emphasized that “*[t]he Pala Band shall provide all*

1 *persons with due process and equal protection of the law required by the Indian Civil Rights  
2 Act.”*

3       133. The Indian Civil Rights Act (“ICRA”), referenced in Pala’s Constitution, is codified  
4 at 25 U.S.C. §§ 1301-03. The ICRA was enacted by Congress to prevent abuses tribal members  
5 had endured from the “sometimes corrupt, incompetent, or tyrannical tribal officials.” Under  
6 Section 1302(8) of the ICRA, “[n]o Indian tribe in exercising powers of self government shall - . . .  
7 deny to any person within its jurisdiction the equal protection of its laws or deprive any person of  
8 liberty or property without due process of law.” Because Defendants took away Plaintiffs’ Tribal  
9 citizenship, voting rights, and property without providing them with due process as required under  
10 Pala’s Constitution and the ICRA, they exceeded their authority and the Britten Descendants’  
11 disenrollments are invalid.

12       134. Although Defendants purported to derive their authority to disenroll the Britten  
13 Descendants based on the Revised Enrollment Ordinances that Defendants themselves had  
14 adopted, Pala’s Constitution requires that enrollment ordinances comply with the Constitution.  
15 Specifically, according to Pala’s Constitution, “[t]he Executive Committee may from time to time  
16 amend and/or replace its existing Enrollment Ordinance with an Ordinance governing adoption,  
17 loss of membership, disenrollment, and future membership, *provided that such ordinances are in  
18 compliance with this Constitution.*” Because the Revised Enrollment Ordinances did not comply  
19 with Pala’s constitutional requirements of due process by failing to provide procedures regarding  
20 notice, hearings and “true” appeals, these Ordinances are invalid.

21       135. Furthermore, Plaintiffs and the other disenrolled Britten Descendants were deprived  
22 of equal protection. Indeed, Defendants singled out the Britten Descendants for disenrollment,  
23 even though the blood degree of other families within the Tribe are also in question, including with  
24 respect to the descendants of Rosinda Nolasquez and Rumijio Lugo. For example, although  
25 Rosinda Nolasquez is listed as “4/4” on the 1913 Pala Allotment Rolls, her 1928 application states  
26 that her grandfather was a Yaqui Indian, and she authored a book that states that her mother was  
27 considered “foreign lineage,” meaning that she might have only had 1/4 Pala Indian blood.  
28

1 Significantly, Pala Vice Chairman/Defendant Leroy Miranda is a Nolasquez Descendant.  
 2 Likewise, Rumijio Lugo, a relative of Defendants Theresa Nieto and Dion Perez, was apparently  
 3 born in Morongo and was not part of the original people on the Pala Reservation or the Cupeños  
 4 who were removed from Warner's Springs, and thus it is questionable whether he was qualified to  
 5 be a Pala.

6

7           **F.       The BIA Recommends That Disenrolled Britten Descendants  
                  Be Reinstated as Pala Members**

8           136. On February 24, 2012, following the appeal of the first eight Britten Descendants  
 9 who were disenrolled by the Defendants, the BIA issued a recommendation. Noting that their  
 10 appeals had been timely filed, the BIA recommended that Pala keep these Britten Descendants on  
 11 the Tribal membership roll because "*it has been proven that they possess the required degree of*  
 12 *Indian blood.*" Specifically, the BIA's February 24, 2012 letter to counsel for the eight  
 13 disenrolled members states, in relevant part, that:

14

15           In a memorandum dated January 17, 1986 the Sacramento Area  
 16 Office (now Pacific Region Office) requested the Assistant  
 17 Secretary – Indian Affairs (ASIA) to determine the blood degree of  
 18 Margarita Britten. Sacramento Area Office records indicated her  
 19 blood degree as 4/4 and recommended her blood degree to be  
 20 increased to 4/4 degree Cupa Indian blood. ASIA issued a  
 21 decision on May 17, 1989 that Margarita Britten was a full-blood  
 22 Indian, and that Ms. Majel possessed 1/16 Cupa Indian blood, and  
 23 possessed the minimum blood degree required for enrollment.  
 24 ASIA based this decision on following documents: 1913 Pala  
 25 Allotment Roll, which indicates Margarita Britten as 4/4 degree of  
 26 Indian blood, supporting evidence of relatives that applied for  
 27 enrollment with the Band as well as relatives requesting a change  
 28 to show the 4/4 degree of Indian blood, and statements by Carolina  
 Nolasquez and other record supporting documents. *This decision  
 was final for the Department of the Interior.*

25

26           Based on the review of our records along with the fore-mentioned  
 27 ASIA decision concluding Margarita Britten as being a fullblood  
 28 Indian, *our recommendation to the Band is to change its  
 disenrollment decision of the eight individuals and to have them  
 remain on the tribal membership roll of the Pala Band of  
 Mission Indians.*

1       137. Even though the Revised Enrollment Ordinances provide that “[w]ithin thirty days  
 2 of receipt of the recommendation of the Director, the Executive Committee shall meet and  
 3 consider that recommendation and make a final decision on the appeal of decision,” Defendants  
 4 have yet to meet to make a final decision on the BIA’s recommendation to reinstate membership of  
 5 the eight Britten Descendants. Indeed, for all intents and purposes, Defendants had already made  
 6 their “final” decision even before receiving the BIA’s recommendation upon appeal, because they  
 7 had already stripped these disenrollees of all of their Tribal rights and benefits without authority.

8       138. On June 7, 2012, the BIA issued another recommendation letter based on an appeal  
 9 filed by 53 of 154 Britten Descendants who were disenrolled in the second wave of disenrollments.  
 10 The letter from the BIA states, in relevant part, that:

11  
 12       Based on our review of the documents provided by the individuals  
 13 requesting review and the record in our office, it is our  
 14 recommendation that these individuals remain enrolled with the  
 15 Band *as there was no evidence provided to support the*  
*disenrollment of these individuals.* Therefore, *our*  
*recommendation to the Band is to continue to recognize the*  
*membership status of the individuals affected by the February 3,*  
*2012, Executive Committee action.*<sup>7</sup>  
 16

17       139. However, on June 5, 2012, even before the BIA had issued its recommendation, in  
 18 flagrant disregard of the Revised Enrollment Ordinances requiring the Executive Committee to  
 19 wait for the BIA’s recommendation, the Executive Committee held a meeting where they  
 20 determined their disenrollment of the 154 Britten Descendants was “final.”

21       140. Plaintiffs and their families have suffered, and continue to suffer, the loss of their  
 22 tribal identities and their cultural heritage. They have received “hate mail” from anonymous  
 23 persons who have characterized themselves as the “real members” of the Tribe on the envelopes.  
 24 Upon information and belief, some of the hate mail was sent by Andrew Smith, the brother of

---

25  
 26       <sup>7</sup> The Executive Committee held a Special Meeting and decided to disenroll the 154 Britten  
 27 Descendants on February 1, 2012. On February 3, 2012, they sent a letter to these Britten  
 28 Descendants informing them of the decision.

1 Chairman/Defendant Robert Smith. Plaintiffs and other Britten Descendants have been shunned  
2 and harassed by members of the Pala community. They have lost homes, educational assistance,  
3 medical insurance, monthly per capita distributions, and trust accounts amounting in hundreds of  
4 thousands of dollars. Their pain and tears will continue if there is no intervention.

5 **DEFENDANTS' MOTIVE AND WRONGDOING**

6 141. Defendants participated in the wrongdoing complained of herein in order to protect  
7 and perpetuate their positions and the compensation, power, perquisites and prestige they obtained  
8 and enjoyed thereby. In addition, they participated in the wrongdoing in order to further enrich  
9 themselves and to prevent scrutiny of questionable transactions that they had caused the Tribe to  
10 engage in. Further, their disenrollment of the Britten Descendants arose out of discrimination  
11 against a particular family and its racial lineage, as well as personal animus.

12 142. Defendants received payments, power, prestige and other benefits by virtue of their  
13 membership on the Executive Committee and their control of the Tribe. Each Defendant is the  
14 recipient of remuneration paid by the Tribe, the continuation of which is dependent upon their  
15 continued positions on the Executive Committee. Although the amount of remuneration paid by  
16 the Tribe to Defendants is not known to Plaintiffs, Plaintiffs believe that Defendants derive  
17 substantial compensation and numerous other benefits from their positions. In addition, each  
18 Defendant stands to benefit financially by removing Plaintiffs and other Britten Descendants from  
19 the Tribe because they will receive higher individual per capita distributions. By purging their  
20 political enemies and adversaries from the Tribe, Defendants ensured that they would remain in  
21 control and domination over the Tribe, and continue to receive the benefits derived from their  
22 positions. Defendants have thus benefited from the wrongdoing alleged herein and have engaged  
23 in such conduct to preserve their positions of control and the perquisites thereof.

24 143. Defendants' elimination of Plaintiffs and other Britten Descendants from the Tribe  
25 ensured that Defendants would maintain their control and domination over the Tribe. Indeed, in  
26 2003, some Britten Descendants petitioned to request a Special Meeting to discuss inappropriate  
27 personal conduct by Chairman/Defendant Smith at the Pala Casino. However, the meeting was  
28

1 cancelled because Smith declared the petition signed by more than 90 Tribal members to be illegal  
2 and not prepared in accordance with the Tribe's Constitution. The Britten Descendants have also  
3 questioned Defendants' financial dealings on behalf of the Tribe and why certain transactions were  
4 entered into without authorization by the Tribal Council. In 2011, King Freeman, a Britten  
5 Descendant, also petitioned for the removal of Vice Chairman/Defendant Miranda for his criminal  
6 conduct. This began the wave of disenrollments of the Britten Descendants, after Defendants had  
7 made sure that these disenrollees would receive no due process by way of appeals through the  
8 BIA, or hearings through the Intertribal Courts. The disenrollment of the Britten Descendants by  
9 Defendants was their punishment for daring to speaking up against Defendants. Similarly, former  
10 employees of Pala Casino, headed by Chairman Smith, were terminated when they complained to  
11 management that certain illegal and accounting irregularities were occurring in violation of rules  
12 set forth by the National Indian Gaming Commission.

13 144. To eliminate challenges to their positions and scrutiny of their conduct, and to  
14 retaliate against King Freeman and his family, Defendants have stripped Plaintiffs of their Tribal  
15 citizenship by using Margarita Britten's blood degree as an excuse. Plaintiffs have been and will  
16 continue to be deprived of their rights as members of the Tribe, including the right to petition; to  
17 vote in Tribal elections; to utilize Tribal resources and facilities; and to receive per capita  
18 payments, trust funds, home loans, health insurance, tuition assistance and other benefits. Their  
19 lives have been turned upside down due to Defendants' wrongful conduct.

20 145. Defendants have used their control and domination of the Tribe to unjustly deprive  
21 Plaintiffs of their civil rights. Plaintiffs received no due process or equal protection with respect to  
22 their disenrollment from the Tribe. Plaintiffs are unable to seek recourse from the Intertribal  
23 Courts because Defendants withdrew Pala from its participation. The BIA cannot invalidate the  
24 Defendants' actions because the Defendants caused the BIA to be relegated to an advisory role,  
25 such that the BIA could only make recommendations but could not cause Defendants to reverse  
26 their decisions. The domination of the Executive Committee by Defendants Smith and Miranda  
27 has resulted in a corrupt Tribal government incapable of fairly and adequately adjudicating  
28

1 Plaintiffs' claims. Indeed, on February 24, 2012, upon the "appeal" by the first eight Britten  
2 Descendants who were disenrolled, the BIA recommended to the Executive Committee that they  
3 reverse their decision. However, the Executive Committee has yet to act on its recommendation.  
4 The BIA also recommended to the Executive that they reverse their decision regarding the other  
5 Britten Descendants who were disenrolled in the second wave of disenrollments. However, the  
6 Executive Committee had already declared these disenrollment decisions to be "final" before it  
7 even received the BIA's recommendation on their appeal.

8 146. Defendants have also deprived Plaintiffs of equal protection and have discriminated  
9 against the Britten Descendants. For example, the Executive Committee has been asked to inquire  
10 into the blood degree of Roscinda Nolasquez – the ancestor of Vice Chairman Leroy Miranda –  
11 because there are several historical documents that showed that her grandfather was 4/4 Yaqui, and  
12 therefore possessed no Cupa blood, making a huge impact in the blood quantum of her  
13 descendants. The request included a family tree and documents from the Central Office in  
14 Washington D.C. stating that Yaqui blood is not considered Native blood. Nonetheless, the  
15 Executive Committee ignored this request to review the blood quantum and membership  
16 qualification of the Nolasquez descendants, thus demonstrating that the Britten Descendants were  
17 discriminated against and not treated equally.

#### 18 SOVEREIGN IMMUNITY IS INAPPLICABLE

19 147. Sovereign immunity offers no protection for Defendants because they acted  
20 manifestly and palpably beyond their authority in disenrolling Plaintiffs and other Britten  
21 Descendants.

22 148. Defendants did not have authority to disenroll Plaintiffs and the other Britten  
23 Descendants because they exceeded the authority that the Tribe had granted them. Defendants  
24 purportedly derived their power to institute enrollment ordinances based on Pala's Constitution.  
25 However, the Constitution was not valid, as it was adopted through a Resolution with the approval  
26 of only 27 members rather than through a Tribal election where it was approved by a majority of  
27 adult members, as required.

1       149. Even assuming the validity of the Constitution, Defendants exceeded their authority  
 2 because Defendants failed to provide the Britten Descendants with due process in connection with  
 3 their disenrollments. Pala's Constitution mandates that "The Pala Band shall provide all persons  
 4 with due process and equal protection of the law required by the Indian Civil Rights Act (25  
 5 U.S.C. Section 1302)." This requirement was not followed by Defendants. In fact, Defendants  
 6 subverted due process by foreclosing Plaintiffs' access to Intertribal Courts and any real appeals.

7       150. In addition, Defendants lacked authority to disenroll Plaintiffs and the other Britten  
 8 Descendants because two of the five members the Executive Committee who decided on the  
 9 disenrollments had criminal records and should not have been serving on the Executive  
 10 Committee.

11       151. Defendants also had no authority under Pala's Constitution or its enrollment  
 12 ordinances to disenroll the Britten Descendants because they could not revisit the issue of  
 13 Margarita Britten's blood degree after Pala's General Council and the BIA had already determined  
 14 that she was a full-blooded Pala Indian. If anything, Defendants were required under Pala's  
 15 Constitution to carry out the dictates of the Pala's General Council, and thus they should have been  
 16 protecting the Britten Descendants' membership in the Tribe, instead of kicking them out.

17       152. Further, pursuant to the moratorium passed by the Tribe on January 9, 2002, Pala's  
 18 membership and enrollment requirements were supposed to remain "as is for the next ten (10)  
 19 years." Thus, Defendants were restricted from taking any action with respect to any tribal  
 20 member's status or to implement ordinances that gave themselves additional power over  
 21 enrollments. Also, because the BIA had final approval over membership applications as of 2002,  
 22 when the moratorium was passed, the BIA has final say on enrollments, not Defendants.

23       153. Indeed, the fact that Pala's Executive Committee dominated by Defendants Smith  
 24 and Miranda has thus far failed to act on the BIA's recommendation to re-enroll the first eight  
 25 Britten Descendants – despite Pala's Revised Enrollment Ordinances requiring that the Executive  
 26 Committee make a final decision within thirty days of receipt of the BIA's recommendation on the  
 27 appeal – and that the Executive Committee had already pronounced the disenrollments of the 154  
 28

1 additional Britten Descendants to be final, even before the BIA issued a recommendation  
2 regarding the appeal of these other disenrollments – which also violates Pala’s enrollment  
3 ordinance – further demonstrate Defendants’ utter disregard of any law. They have ignored any  
4 limits on their authority and exceeded their authority with respect to the disenrollments.  
5 Defendants’ malicious disenrollment of the Britten Descendants was merely a ruse to further their  
6 personal agenda of eliminating political and personal enemies.

7 154. Moreover, sovereign immunity does not apply because not only have Defendants  
8 exceeded the authority granted to them by the Tribe, but they have intentionally subverted the will  
9 of the Tribe. The governing body of Pala is supposed be the General Council, consisting of all  
10 members of Pala who are eighteen years of age and older. Despite the fact that 79 members of  
11 Pala’s General Council signed a petition to request a special meeting to discuss the disenrollment  
12 of the Britten Descendants, Pala’s Executive Committee, dominated by Defendants Smith and  
13 Miranda, have refused to hold the meeting. In fact, Chairman/Defendant Smith sent a letter to  
14 Tribal Members claiming that the “petition is circulating under misleading pretenses” and that  
15 “[t]he merits of this petition are false.” By actively preventing a General Council meeting to  
16 discuss the disenrollment of the Britten Descendants, Defendant Smith demonstrated that he was  
17 not interested in allowing the General Council – the true sovereign here – to have a say in the  
18 disenrollment of the Britten Descendants. Under these circumstances, covering Defendants under  
19 the cloak of sovereign immunity would turn the concept on its head.

20 155. While an Indian tribe has a right to define its own membership for tribal purposes,  
21 the actions Defendants took were unauthorized by the Tribe and were motivated by reasons  
22 unrelated to the legitimate exercise of sovereignty relating to Tribal membership. Although  
23 Defendants purported to act under the guise of Tribal authority, Defendants in fact were not acting  
24 within their official duties. Defendants took the wrongful actions alleged herein for personal  
25 reasons – specifically, for personal retaliation, personal enrichment, and continued personal power  
26 over the Tribe – and they did so while ignoring the laws of the Tribe.

27

28

1       156. Defendants' disenrollment of the Britten Descendants was not about defining Pala's  
 2 membership or composition of the Tribe's membership roster. Indeed, the definition of "who is  
 3 Pala" for purposes of membership has remained unchanged. When Pala formally organized in  
 4 November 1960, its Articles of Association defined Pala members as:

- 5
- 6             (1) Those persons whose names appear on the Pala Allotment  
     7             Rolls as approved by the Secretary of the Interior on April 12,  
     8             1895, and November 3, 1913, who are living on the date of  
     9             approval by the Commissioner of Indian Affairs;
  - 10            (2) All living descendants of persons on the Allotment Rolls  
     11            covered in Section 2.A(1) regardless of whether the original  
     12            allottees are living or deceased, provided that such descendants  
     13            have one-sixteenth (1/16) or more degree of Indian blood of the  
     14            Band;
  - 15            (3) Those persons who have been adopted by the Band and such  
     16            adoption has been approved by the Bureau of Indian Affairs.

17       Similarly, Pala's Constitution sets forth substantially the same definition for Pala membership, as  
 18 follows:

- 19           A.     Those persons whose names appear on the Pala Allotment  
 20            Rolls as approved by the Secretary of the Interior on April 12,  
 21            1985, and November 3, 1913, who were living on the date of the  
 22            approval of the Pala Band's original Articles of Association by the  
 23            Commissioner of Indian Affairs.
- 24           B.     All living descendants of persons on the Allotment Rolls  
 25            covered in Section 1(A) above regardless of whether the original  
 26            allottees are living or deceased, provided that they are direct lineal  
 27            descendants and have one-sixteenth (1/16) or more degree of  
 28            Indian blood of the Pala Band.
- 29           C.     Those persons who have been adopted by the Band and  
 30            such adoption has been approved by the Bureau of Indian Affairs.

31       As Pala's membership definition has stayed the same, and the Britten Descendants had been Pala  
 32 members for decades, Defendants' disenrollment actions were not about a Tribe exercising its  
 33 sovereign right to determine who should be a member. Margarita Britten's name appears on the  
 34

1 1913 Pala Allotment Rolls, and her blood degree appears on the Allotment Rolls as "4/4" Pala  
2 Indian. Margarita Britten and her descendants are indisputably rightful Pala members. That fact  
3 has been conclusively determined. Instead, Defendants' disenrollment actions arose out of greed  
4 and desire to control Pala's casino money and Defendants' abuse of power to eliminate personal  
5 enemies and to resolve family feuds. Indeed, it is no coincidence that disenrollment of members  
6 by Indian tribes is a fairly recent phenomenon that have largely occurred in tribes involved in the  
7 casino business.

8 157. Defendants began disenrolling Britten Descendants after an attempt was made by  
9 King Freeman, a Britten Descendant, to remove Vice Chairman/Defendant Miranda from his  
10 position. Shortly after Freeman's petition to recall Miranda, eight Britten Descendants – including  
11 several of King Freeman's children – were disenrolled. After these first eight disenrollments  
12 occurred, a flyer was circulated arguing that the Executive Committee did not act appropriately in  
13 the disenrollments and questioning why the Executive/Enrollment Committee had disenrolled only  
14 eight family members and not the rest of the family who are 1/16<sup>th</sup> descendants. In response,  
15 Chairman/Defendant Smith issued a letter to all adult members of the General Council stating,  
16 among other things, that "King Freeman has lived on his own lies for over 20 years as a member of  
17 our Band and in our community. The Pala Band of Mission Indians voting membership need to  
18 take a firm stand and stay strong as an entity and not allow this to continue. He wants the rest of  
19 his family who are 1/16 descendants, disenrolled!!! Don't take my word for it, see his flyer!!!"  
20 Shortly thereafter, Smith's threat to disenroll the rest of King's family who were 1/16 descendants  
21 became reality, when Defendants disenrolled 154 additional Britten Descendants from the Tribe.  
22 These facts demonstrate that Defendants acted to disenroll the Britten Descendants not because  
23 they were performing their official duties as members of the Executive Committee in evaluating  
24 membership applications, but out of personal animus.

25

26

27

28

1 COUNT I  
2Against All Defendants for Conspiracy to Interfere with Civil Rights  
3  
Pursuant to 42 U.S.C. §1985(3)4  
5 158. Plaintiffs incorporate by reference each of the foregoing allegations as though fully

6 set forth herein.

7  
8 159. Defendants conspired to interfere with Plaintiffs' civil rights. Defendants  
9 participated in the alleged conspiracy to strip Plaintiffs of their right to petition, to vote in Tribal  
10 elections, and to cast votes for candidates other than Defendants.11  
12 160. Defendants exceeded their authority and acted arbitrarily and capriciously in  
13 disenrolling Plaintiffs, and they did so without providing Plaintiffs with due process, meaningful  
14 appellate review, or equal protection, in violation of Section 8 of the Indian Civil Rights Act (25  
15 U.S.C. §1302(8)) and Pala's Constitution, which incorporates the protections afforded by the Indian  
16 Civil Rights Act. In addition, under the Indian Citizenship Act of 1924, all Indians born in the United  
17 States are Citizens of the United States and, as such, Plaintiffs were to be afforded the Constitutional  
18 protections provided to all other United States citizens, including the First Amendment right to petition  
19 and to speak freely and the Fifth Amendment right to due process.20  
21 161. Defendants' actions were fueled by racial and class-based discriminatory animus  
22 toward a defined group of people – the descendants of Margarita Britten, who are Cupeños. Plaintiffs  
23 are a protected class who are genetically part of an ethnically distinctive subgroup of people.24  
25 162. Defendants' actions were designed to prevent Plaintiffs, a defined class of people, from  
26 petitioning and voting so that Defendants could remain in their positions of power and control over the  
27 Tribe without scrutiny.28  
29 163. Defendants' wrongful conduct has caused Plaintiffs to lose their Tribal citizenship, and  
30 has deprived them of their per capita distributions, health insurance, medical services, educational  
31 assistance, and other benefits. Defendants' conduct has also served to deprive Plaintiffs of their  
32 cultural and social identities and their heritage.33  
34 164. Plaintiffs have no tribal or administrative recourse because Defendants caused the Tribe  
35 to withdraw from the Intertribal Council of Southern California in March 2011; there are no Pala courts

1 able to address Plaintiffs' grievances; and an appeal to the BIA is useless because the BIA could only  
2 issue a recommendation to Defendants but cannot compel Defendants to change their previous  
3 decision. In fact, despite the BIA's recommendation to Defendants to re-enroll Plaintiffs and other  
4 Britten Descendants, Defendants have refused to do so.

5 165. Plaintiffs have been injured in their person and property, and have been deprived of  
6 having and exercising their rights.

7 166. As a direct and proximate cause of Defendants' misconduct, Plaintiffs have been  
8 injured and suffered damages.

9 **COUNT II**

10 **Against All Defendants for Violation of Equal Rights Under the Law**  
11 **Pursuant to 42 U.S.C. § 1981**

12 167. Plaintiffs incorporate by reference each of the foregoing allegations as though fully  
13 set forth herein.

14 168. Defendants, motivated by animus against the Britten Descendants who are  
15 Cupeños, have deprived Plaintiffs the full and equal benefit of all laws and proceedings under the  
16 Indian Civil Rights Act and Pala's Constitution, which incorporates the rights in the Indian Civil  
17 Rights Act, by taking away Plaintiffs' property and rights without due process.

18 169. Plaintiffs were targeted and discriminated against by Defendants. Defendants  
19 discriminated against Plaintiffs and violated their equal rights by specifically selecting the Britten  
20 Descendants for disenrollment from Pala, but refusing to review other family lines within the  
21 Tribe. Defendants violated the Britten Descendants' equal rights under the law.

22 170. Plaintiffs are a protected class who are genetically part of an ethically distinctive  
23 subgroup of people.

24 171. As a direct and proximate cause of Defendants' misconduct, Plaintiffs have been  
25 injured and suffered damages.

1  
2                   **COUNT III**  
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4                   Against All Defendants for Conversion  
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6         172. Plaintiffs incorporate by reference and reallege each and every allegation contained  
7 above, as though fully set forth herein.

8         173. Plaintiffs had an ownership and/or property interest in money and benefits provided  
9 by Pala. Plaintiffs are Pala members who individually received approximately \$150,000 per year  
10 from the Tribe in per capita payments, in addition to other benefits including health care and  
education expenses. Further, Plaintiffs' minor children are beneficiaries of trust accounts set up by  
Pala.

11         174. Defendants wrongfully interfered with and unlawfully exercised domination and  
control over Plaintiffs' property when they intentionally and knowingly wrongfully disenrolled  
Plaintiffs from Pala and appropriated the money and property for themselves. In addition,  
Defendants will continue to take and detain Plaintiffs' money and property which, had it not been  
for Defendants' misconduct, would have been paid to and/or provided as benefits to Plaintiffs until  
their death.

17         175. As a direct and proximate result of the conversion by Defendants, Plaintiffs have  
18 suffered and continue to suffer general and special damages of at least \$80 million.

19         176. The conversion was executed by the Defendants with specific, malicious, and  
20 willful intent to injure the Plaintiffs and to benefit the Defendants. Accordingly, Defendants,  
21 individually and/or collectively should pay Plaintiffs the amount that was wrongfully converted  
22 and punitive damages in an amount to be determined at trial.

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**COUNT IV**

**Against All Defendants Against All Defendants for Tortious  
Interference with Prospective Economic Advantage**

177. Plaintiffs incorporate by reference each of the foregoing allegations as though fully set forth herein.

178. Defendants were aware that there was an economic relationship between Pala and the Plaintiffs and that Pala provided, and was expected to provide in the future, per capita payments, health insurance, medical care, tuition and educational assistance, and other economic benefits to Plaintiffs. Plaintiffs and Pala's economic relationship arose from the fact that Plaintiffs are Pala members and that, pursuant to Pala's Amended Plan for Allocation of Gaming Revenue, submitted under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §2701 et seq., Pala was required to utilize gaming funds for individual per capita payments to its members and to provide for the general welfare of the Tribe and its members.

179. Defendant wrongfully disenrolled Plaintiffs from the Tribe without basis in order to intentionally disrupt the relationship between Pala and the Plaintiffs, and the disruption of the relationship in fact occurred.

180. The economic benefit from Pala to Plaintiffs had been, and would have continued to be, realized if it were not for the deliberate disruption by Defendants.

181. As a direct and proximate cause of Defendants' misconduct, Plaintiffs have been injured and suffered damages.

## COUNT V

### **Against All Defendants for Group Defamation**

182. Plaintiffs incorporate by reference each of the foregoing allegations as though fully set forth herein.

183. Within the Native American Indian society, tribal authenticity is important. Those who are not considered authentic Indians are often discriminated against, ridiculed, or shunned by other Indians

1        184. Defendants published a statement of fact – specifically, that Margarita Britten was  
2 not a full-blooded Pala Indian and that her descendants are not Pala – that subjected Plaintiffs to  
3 hatred and contempt, and which caused them to be shunned and avoided or has injured them in  
4 their occupation. Defendants' statement concerning Margarita Britten and her descendants was  
5 false. Defendants communicated this statement to Pala tribal members and others.

6       185. Defendants' communication has harmed the reputation of Plaintiffs, has lowered  
7 Plaintiffs in the estimation of the Pala and Native Indian communities, and has deterred Pala  
8 members and other Native Indians from associating with Plaintiffs. Plaintiffs have been defamed  
9 in the eyes of the Pala and Native Indian communities.

10 186. Defendants' communication has also caused Plaintiffs to lose monetary  
11 distributions from Pala, trust funds for their children, home loans, scholarships, medical services,  
12 career opportunities, and other rights and benefits.

13        187. Defendants acted at least negligently with respect to the truth of their statement  
14 concerning Margarita Britten and her descendants, if not willfully and maliciously.

15        188. As a direct and proximate cause of Defendants' false statement, Plaintiffs have been  
16        injured and suffer from damages.

## COUNT VI

**Against All Defendants for Civil Conspiracy**

189. Plaintiffs incorporate by reference each of the foregoing allegations as though fully  
set forth herein.

190. Defendants have engaged in a civil conspiracy with respect to Counts II through V.

191. Defendants and their co-conspirators have acted in combination to wrongfully and  
23 illegally take away the per capita payments, trust fund accounts and benefits, as well as the cultural  
24 heritage, of Plaintiffs who are properly members of Pala.

26        192. The conspiracy by the Defendants was committed with malice and specific intent to  
harm Plaintiffs and other Britten Descendants.

193. Defendants have been unjustly enriched by their conspiracy to illegally disenroll the descendants of Margarita Britten. Plaintiffs and other Britten Descendants who were wrongfully disenrolled by Defendants have been damaged as a result of such conspiracy.

194. As a direct and proximate cause of the civil conspiracy of the Defendants, Plaintiffs and the other Britten Descendants who have been disenrolled have been injured and damaged in an amount not yet determined and are entitled to the recovery of such actual damages.

195. Because of Defendants' malicious and intentional conspiracy to harm Plaintiffs, Plaintiffs seek, in addition to any actual damages awarded, the imposition of punitive damages against the Defendants in an attempt to deter Defendants (and others similarly situated as Defendants) from engaging in this type of conduct in the future.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court grant relief as follows:

(1) Enter a judgment against Defendants setting forth specific findings that the Defendants have:

- (a) Engaged in a civil conspiracy to deprive Plaintiffs of their rights and property, and did so knowingly, intentionally, and with malice;
  - (b) Violated Plaintiffs' equal rights under the law;
  - (c) Tortiously interfered with Plaintiffs' economic relationship with Pala;
  - (d) Wrongfully converted Plaintiffs' rights in money and property; and
  - (e) Published a false statement that has harmed Plaintiffs;

(2) Enter a declaratory judgment that the Defendants' improper disenrollment of Plaintiffs constitutes violations of their civil rights:

(3) Enter a permanent injunction to invalidate Defendants' wrongful disenrollment actions:

(4) Enter an order declaring the wrongful disenrollment of Plaintiffs by Defendants to be null and void:

(5) Enter an order requiring Defendants to pay back the money and lost benefits that were withheld and/or taken away from Plaintiffs while they were wrongfully disenrolled;

(6) Enter an order for compensatory damages against the defendants for violations of Plaintiffs' rights in an amount appropriate to the proof adduced at trial;

(7) Enter an order for punitive damages against Defendants for causing, approving and/or ratifying the disenrollment of the Plaintiffs, and for the consequential loss of money, property, and heritage;

(8) Award Plaintiffs the costs and disbursements of pursuing this action, including reasonable attorneys' and experts' fees; and

(9) Grant such other and further relief, including all appropriate equitable relief, as this Court may deem just and proper.

## JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

DATED: July 3, 2012

THE LIN LAW FIRM  
A PROFESSIONAL LAW CORPORATION  
ELIZABETH LIN

Elizabeth Lin

2705 S. Diamond Bar Blvd.  
Suite 398  
Diamond Bar, CA 91765  
Telephone: (909) 595-5522  
Facsimile: (909) 595-5519  
[ElizabethL@thelinlawfirm.com](mailto:ElizabethL@thelinlawfirm.com)

*Counsel for the Plaintiffs*